



annual report 1979-80

Ministry of the Attorney
General
Annual report
1979-80
C. 1

Ministry of the Attorney
General
Annual report
1979-80

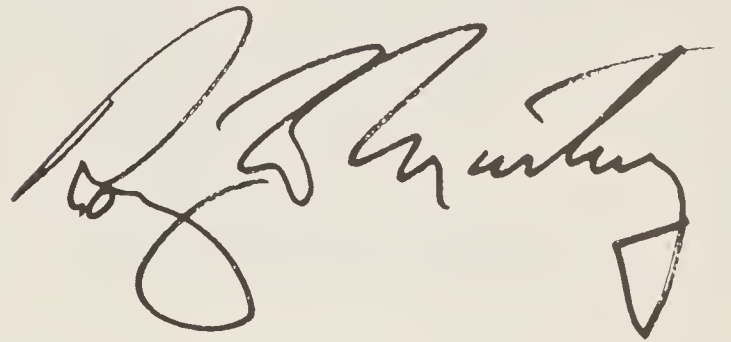
C. 1

MINISTRY OF
ATTORNEY GENERAL
LIBRARY

To His Honour the Lieutenant Governor in
Council

May it please Your Honour:

It is my pleasure to present to your Honour the
Annual Report of the Ministry of the Attorney
General for the year 1979-80.

A handwritten signature in black ink, appearing to read "R. Roy McMurtry". The signature is fluid and cursive, with a large loop at the end.

The Honourable R. Roy McMurtry, Q.C.
Attorney General





Digitized by the Internet Archive
in 2018 with funding from
Ontario Council of University Libraries

https://archive.org/details/mag_00035736

Table of Contents

Letter from the Deputy Attorney General	5
The Ministry of the Attorney General	6
Office of the Legislative Counsel	7
Policy Development Division	8
Criminal Law Division	12
Civil Litigation and Legal	
Advisory Services	20
Courts Administration Division	34
Programs and Administration Division	45
Boards and Commissions	49
Ontario Law Reform Commission	49
Ontario Municipal Board	50
Assessment Review Court	52
Criminal Injuries Compensation Board	55
Board of Negotiation	57
Land Compensation Board	59
Other Boards and Committees	59
Background Paper	60
Recent Developments in the Law Relating to Children	60
Appendix	65
Acts Administered by the Ministry of the Attorney General	65

Letter from the Deputy Attorney General

February 9, 1981

The Honourable R. Roy McMurtry, Q.C.,
Attorney General for Ontario,
Ministry of the Attorney General,
18th Floor, 18 King Street East,
Toronto, Ontario.
M5C 1C5

Dear Mr. Attorney:

I am pleased to be able to present to you, in accordance with the provisions of Section 7 of The Ministry of the Attorney General Act, our sixth Annual Report describing the operations of the Ministry throughout the year 1979-1980.

The year has been one in which the Ministry has renewed its efforts to confront a number of critical problems facing the administration of justice. Perhaps most noteworthy in this regard is the new Provincial Offences Act which will significantly streamline and simplify the handling of minor provincial offences. The passage of the new Act presents all concerned with the administration of justice with a challenge: a challenge of achieving enhanced efficiency, while at the same time scrupulously protecting the rights of accused persons. Such reforms make demands on all of us, but I am pleased to be able to report that the system appears to be meeting those demands.

Similar progress has been seen in the development of French language court services in Ontario. We are also making progress in the vitally important task of providing a final French language version of the Ontario Statutes.

While these more recent developments have made demands on the Ministry, the routine operations of the Ministry have continued to face increasing pressures from increasing caseloads, at a time of tight budgetary control. In many respects, our system of justice rests upon the dedication and zeal of many employees, working in the Ministry of the Attorney General across Ontario, who have responded to the many demands placed upon them, and who have

continued to provide the public with a quality of service that it deserves and it expects. This report summarizes, all too briefly, their work during 1979-80.

All of which is respectfully submitted.

Yours very sincerely,

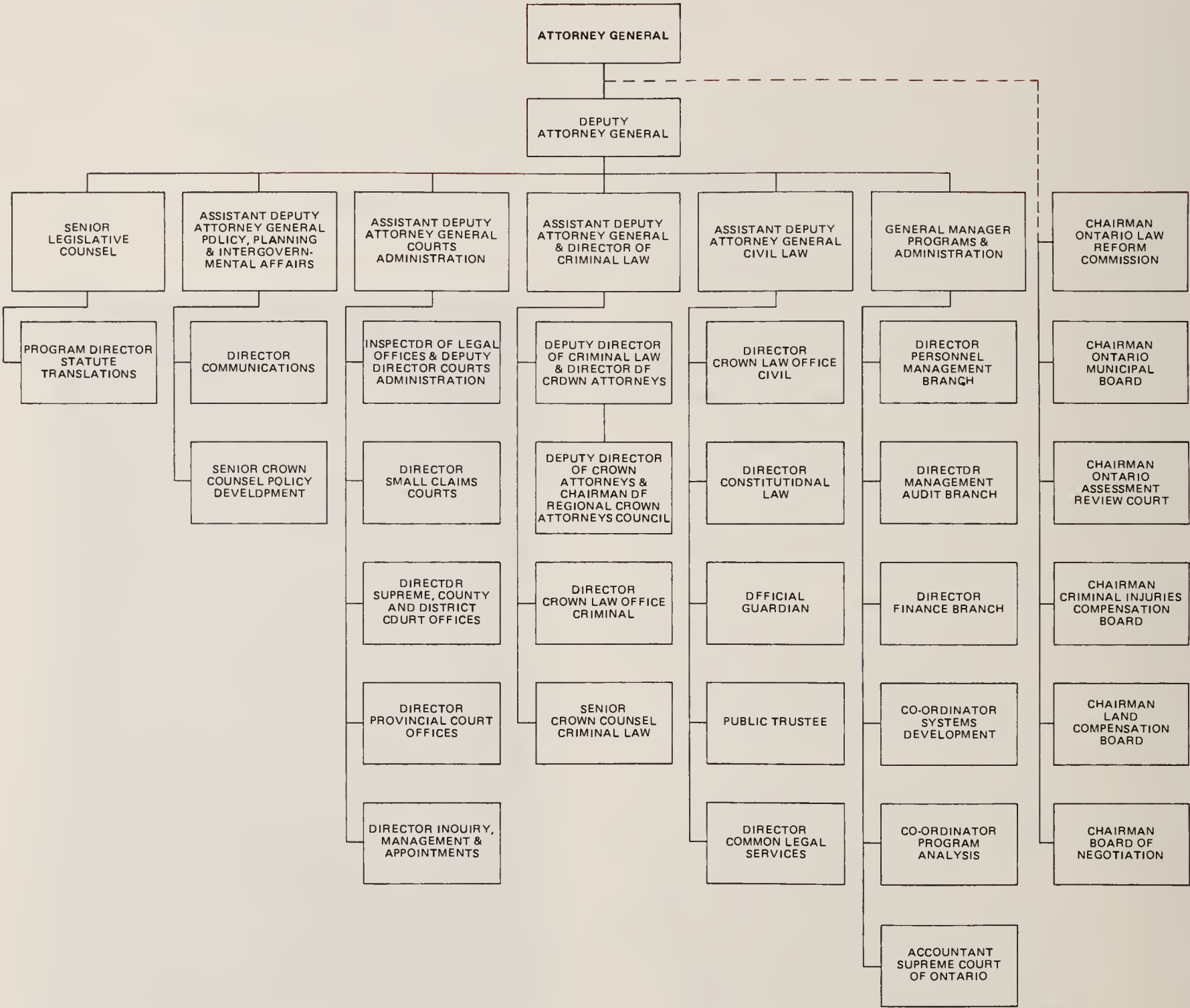


H. Allan Leal,
Deputy Attorney General.



The Ministry of the Attorney General

Senior Positions



OFFICE OF THE LEGISLATIVE COUNSEL

Arthur N. Stone, Q.C.,
Senior Legislative Counsel

The office provides a complete central legislative drafting service for the Government, members of the House and petitioners for private legislation.

The Legislative Counsel is part of the Ministry of the Attorney General in respect of Government matters but has an independent function as an officer of the Legislative Assembly in respect of the House procedures and work of private members. The latter function is the traditional office of law clerk of the House.

The office consists of eight lawyers, eight secretaries and clerks, four legislative editors and a French translation staff of six translators, an administrative executive and two secretaries.

In particular, the duties and responsibilities of the office include:

1. Drafting all bills and regulations.
2. Advising and assisting the government, Cabinet ministers, members and committees of the Assembly on all legislative matters.
3. Preparing and overseeing the printing of the annual volume of statutes and office consolidations.
4. Maintaining public files of regulations and publishing the regulations.
5. Translating selected statutes into the French language and publishing the French translations for public convenience.

The statutes are maintained updated in a form capable of being printed at any time. This update is used for office consolidations and decennial revisions. The method of printing is undergoing a transition to the use of magnetic tape which will eventually result in the storage and update of all the statutes in this form with a capacity for retrieval.

The publication of the Revised Statutes, 1980 and Revised Regulations, 1980 has been undertaken and will be distributed in 1981. Innovations will include a comprehensive general index to the Statutes and a schedule collecting all the provisions that have been unconsolidated and unrepealed since 1867.

The French translation program consists of the translation and publication of about one-quarter of the Ontario statutes and selected regulations. The translations published under the imprimatur of the Attorney General have the status of official translations. Questions of interpretation are governed by the text in the form in which the Act was passed by the Legislature.

Number of Bills Drafted, Introduced and Passed

	1976	1977	1978	1979
Government bills —				
Drafted	151	206	158	180
Introduced	101	127	125	133
Passed	87	70	106	114
Private bills —				
Introduced	26	57	49	32
Passed	24	43	47	28
Private member's bills —				
Drafted	104	96	99	102
Introduced	95	80	89	79
Passed	0	1	0	1
Number of pages in statute book	895	1010	1384	1056

Number of Regulations Drafted and Filed

	1976	1977	1978	1979
Drafted	1230	1156	1227	1122
Filed	1021	975	1007	962
Published pages in Gazette	1717	1797	1965	2568

Program of Operations for the fiscal year 1980-1981

The office will continue its existing operation and establish a data bank of Ontario statutes and regulations.

The Ministry of the Attorney General

POLICY DEVELOPMENT DIVISION

Archie Campbell, Q.C.,
Assistant Deputy Attorney General

The Division

At present the Division, which consists of an Assistant Deputy Attorney General and five lawyers, reports to and is directly supervised by the Deputy Attorney General.

Present Duties

The duties of the division include:

1. Studying and analyzing all aspects of the administration of justice in Ontario.
2. Continual review of the 140 statutes administered by the Ministry (see appendix), proposing reform and analyzing suggestions for reform from the Ontario Law Reform Commission, the public, lawyers, other ministries and Members of the Legislature.
3. Developing the legislative program of the Ministry, beginning with discussion of suggested legislation with senior staff members of the Ministry, preparing Ministry policy submissions outlining the problems and evaluating all government options for discussion and decision-making by the justice committee of Cabinet and by Cabinet. This process concludes with counsel from the division assisting Legislative Counsel to create draft bills reflecting Cabinet decisions.
4. Advising the Attorney General and Deputy Attorney General during the legislative progress of a bill. This generally involves attending the Legislative Assembly with the Attorney General to advise him about the bill, if necessary, and to help him answer detailed technical questions which may arise during debate.

The division is also responsible for the Ministry Library, which serves the Crown Law Office and (about 50) field offices.

Examples of Activity

Legislation

1. The Administration of Justice Amendment Act, 1979 authorizes the fees payable in court proceedings to be fixed by regulation of the Lieutenant Governor in Council. Previously fees were fixed by the rule-making body for each

court. The amendment, which will allow a more consistent approach to court fees in Ontario, is now in force.

2. The Architects Amendment Act, 1979 makes it explicit that, although the present law stipulates that no corporation shall be licensed to practise architecture in Ontario, architects are not prevented from providing architectural services to a corporation providing such services in respect of work outside Ontario. In force as of December 20, 1979.
3. The Compensation for Victims of Crime Amendment Act, 1979 allows the Lieutenant Governor in Council to appoint such number of members as are considered necessary to the Criminal Injuries Compensation Board. It had been stipulated that there be not fewer than five and not more than seven members of the Board. This change, in force as of December 20, 1979, should expedite the compensation of victims of crime.
4. The County Judges Amendment Act, 1979 redefines the status of certain county judges by removing the term "junior judge" from The County Judges Act and related Acts. Passed by the legislature in June of 1979.
5. The Evidence Amendment Act, 1979 permits the use of official translations of statutes in French language proceedings. In force as of June 14, 1979.
6. The Interprovincial Subpoenas Act, 1979 provides a procedure for the enforcement in Ontario of a subpoena issued in another province or territory of Canada, for the attendance of a person in Ontario. This Act closely follows the legislation recommended by the Uniform Law Conference of Canada. Passed by the legislature in December of 1979.
7. The Judicature Amendment Act, 1979 effects certain routine changes in respect of functions and titles of certain officers of the courts, generally aimed at increasing administrative flexibility. Provision is also made for payment of interest on judgments based on the prime rate, with discretion in the judge to depart from the general rule where to do so would be just. As well, the amendment permits a procedure for the fixing of the rate of interest to be used in determining the capitalized value of an award in respect of future damages. In force as of June 22, 1979.

8. The Libel and Slander Amendment Act, 1980 is designed to cope with recently developed methods of communication by extending the definition of broadcasts. It also includes a limited extension of the defence of fair comment. In force as of June 19, 1980.

9. The Occupiers' Liability Act, 1980 and The Trespass to Property Act, 1980 together facilitate continued co-operation between agricultural and recreational groups. The Occupiers' Liability Act replaces the common law duties of an occupier with a single duty of care based on the rules of negligence. Certain exceptions are specified, including a lower duty of care with respect to trespassers and persons allowed to enter certain classes of land for recreational activity. The Trespass to Property Act provides more effective sanctions for trespass and establishes a system whereby an owner can give a limited right of entry to permit recreational activity.

These Acts strengthen the property rights and protection of land occupiers and, at the same time, encourage occupiers to make their land available for compatible recreational activities. Both Acts are now in force.

10. The Powers of Attorney Act, 1979 implements recommendations of the Ontario Law Reform Commission: The power to grant a power of attorney exercisable after the death of the donor is removed, and provision is made for powers of attorney exercisable during subsequent legal incapacity of the donor. The Act also provides for a simplified form of general power of attorney. In force as of December 20, 1979.

11. The Provincial Court (Civil Division) Project Act, 1979, in force as of June 30, 1980, creates a new court in Metropolitan Toronto. This court has taken over the jurisdiction of the small claims courts in this area and, in addition, has jurisdiction in most types of civil claims up to \$3,000. One of the chief motivations behind this legislation was a commitment to make the courts of Ontario accessible to ordinary citizens and to provide less expensive, less prolonged methods of settling disputes. If the new court is successful, it may be extended to other parts of the province.

12. The Public Accountancy Amendment Act, 1979 removes the \$25 maximum on licensing fees for public accountants, an amount which had remained unchanged since 1950. The amendment

permits the Public Accountants Council to set fees, subject to the approval of the Lieutenant Governor in Council. In force as of June 14, 1979.

13. The Regulations Revision Act, 1979 and The Statutes Revision Act, 1979 provide the statutory basis for consolidation and revision of Ontario regulations and statutes at the end of 1980. Some innovations to procedures in earlier revisions have been introduced. These Acts were passed by the legislature in December of 1979.

14. The Territorial Division Amendment Act, 1980 creates the new judicial district of York Region. This division took responsibility for the Act, since it creates a territory for judicial purposes. In force as of June 11, 1980.

Studies, Papers and Consultations

1. The division assisted the interministerial task force on medical consents and on the guardianship of mentally incompetent persons.

2. Participation in the interministerial committee on young offenders was continued.

3. The division worked with the interministerial committee on animal control problems.

4. A lawyer of this division is acting as counsel to the task force on vandalism.

5. Lawyers from this division have been involved in federal-provincial consultation in respect of transfer of the federal power over divorce to the provinces, with a view to constitutional amendment.

6. The division has been monitoring courts' decisions under The Family Law Reform Act. We have also responded to numerous enquiries from the Bar and from the public regarding the Act. Our effort to inform the public about The Family Law Reform Act has been ongoing: Explanatory pamphlets have been translated into French, and both language versions have been widely distributed.

7. The division continues to contribute to continuing educational programs for the legal profession, sponsored by the Law Society of Upper Canada and the Canadian Bar Association.

8. A lawyer from the division acted as secretary and co-ordinator of the Rules Advisory Committee for the Provincial Court (Civil Division) of Metropolitan Toronto.

The Ministry of the Attorney General

9. The division participated on the Tort Compensation Committee, reporting to the Bench and Bar Committee. Recommendations were submitted regarding instalment payment of judgment debts in appropriate circumstances.

10. In keeping with our role in developing the new legislation regarding residential tenancies, a lawyer from this division was appointed to the Board of Residential Tenancy. In this way, the Board can be informed by the insights gained during the process of developing the legislation.

11. A discussion paper on the proposed Construction Lien Act, an Act to replace The Mechanics Lien Act, has been prepared, after consultation with all segments of the construction industry. The aim is to respond to the existing complexities and uncertainties in this area of the law by developing straightforward legislation, which would take into account the problems that concerned parties have encountered under the present law.

12. Extensive consideration has been given to The Juries Act, 1974. A discussion paper addresses eligibility to serve as a juror, and deals with such civil rights issues as the eligibility of blind persons, and of persons 70 years of age or older.

13. A lawyer from this division has worked on the Rules Committee of the Provincial Courts (Family Division), resulting in a new set of rules to govern proceedings under The Child Welfare Act, and a reconsolidation of the rules of the Provincial Courts (Family Division). As well, the division assisted in the preparation of rules for the Unified Family Court.

14. Review of the Report of the Civil Procedure Revision Committee is ongoing.

15. Statutory provisions in respect of landholding by charities have been under study, and proposals to amend the law so as to avoid unfairness to charitable organizations have been developed.

16. The division is studying the problems which have been surfacing in the courts regarding the estates of persons who have died in Ontario, leaving potential beneficiaries in the Soviet Union and other Eastern European countries. The aim is to ensure that the testamentary freedom of such persons is not prejudiced.

17. The division has maintained ongoing liaison with the Ontario Legal Aid Plan through the work of a Joint Committee.

18. The division is active in issues involving law enforcement and race relations.

19. The division assumed major responsibilities in the development and implementation of the Provincial Offences Act.

Uniform Law Conference

The Conference consists of commissioners and other participants from all provinces, the territories and the federal Government who meet annually to consider reports and proposed statutes aimed at securing greater uniformity in the law of all jurisdictions in Canada.

The division has continued to contribute to the work of this Conference. Consideration of reciprocal enforcement of maintenance orders within Canada led to the passing of a uniform draft Act of the Conference. Discussion of the status of children continues.

French Language Services Branch

Etienne Saint-Aubin,
Co-Ordinator

As the Ministry's French-language services program expanded and became a significant element of its operations, the need for full-time attention and co-ordination became evident. In this regard, an office of Co-ordinator of French Language Services was established to ensure that the momentum generated to date will be maintained and appropriate attention and study devoted to the further expansion of the program.

On December 31, 1979, there occurred the most important development to date in the Ministry's French-language services program and probably one of the most significant in the overall administration of justice. On this date, an amendment to the Criminal Code of Canada, passed at the request of the Attorney General of Ontario in June of 1978, was proclaimed and thereby took effect in Ontario. Consultation between Ontario and the federal government had taken place in the interim period between enactment and proclamation to ensure an orderly implementation. As part of this implementation, a course in French legal terminology was given to those judges and Crown attorneys who spoke French but needed some additional preparation to deal with trials in the French language.

This amendment, known as Bill C-42, provides upon request anywhere in Ontario, for a trial before a judge or judge and jury which speaks both English and French, for an accused charged with a criminal offence who is French-speaking. Since December 31, 1979, a number of trials have been conducted pursuant to these new provisions which, for some areas, involve the movement of judges, Crown Attorneys and other court support staff from areas which have these resources. Most of the areas where the main volume arises have such resources in place. Accordingly, the rule is that a trial be heard in the locality in which the matter arises. The exception to this occurs in those matters where trial by jury is requested in an area which does not have a French-speaking population base large enough to permit empanelling a jury. In such cases, a change of venue provision operates.

For matters other than under the Criminal Code, continued extension has taken place, building on the legislative footing which had been prepared carefully in the earlier stages of the French-language services program. Accordingly, designations of courts by Order-in-Council pursuant to section 127 of The Judicature Act of Ontario have brought the availability of bilingual trials to the Provincial Court (Family Division), Small Claims Courts and Provincial Offences Courts. The chart which follows shows which courts are so designated.

Planning is continuing for the designation of other courts in the near future. In this regard, there have been ongoing vigorous efforts by various branches to increase the Ministry's resources in order to permit further extension.

Designated Courts

Designated Counties/Districts	Provincial Court (Family Division)	Provincial Court (Prov. Offences)	Small Claims
Algoma	Elliot Lake Blind River Hornepayne	Hornepayne	Wawa Elliot Lake
Cochrane	Cochrane Hearst Kapuskasing Smooth Rock Falls	Cochrane Kapuskasing Hearst Smooth Rock Falls Timmins	Cochrane Timmins Kapuskasing Iroquois Falls
Essex			Windsor
Niagara South			Welland Niagara Falls
Nipissing	North Bay Sturgeon Falls	North Bay Sturgeon Falls Mattawa	North Bay Sturgeon Falls
Ottawa-Carleton	Ottawa	Ottawa	Ottawa
Prescott-Russell	L'Orignal Rockland	L'Orignal Rockland Hawkesbury	Hawkesbury Rockland
Stormont-Dundas -Glengarry	Cornwall		Alexandria Cornwall
Sudbury	Sudbury Espanola	Sudbury Espanola	Sudbury Espanola Chapleau
Timiskaming			Haileybury Englehart Kirkland Lake

Note County/District and Supreme Courts not yet designated.

The Ministry of the Attorney General

Existing Rights

Existing rights to trials before a bilingual court pursuant to Criminal Code (s. 462.1) and The Judicature Act.

A. Criminal matters

(both for indictable offences and summary conviction proceedings)

In all 49 counties/districts at all levels of courts.

Note — does not include proceedings other than trials, namely preliminary inquiries, bail hearings, special remedies. Present practice is to accommodate requests for such where feasible.

B. Civil matters and Quasi-Criminal matters

Pursuant to Judicature Act, limited to designated counties/districts and designated courts therein. "Courts" interpreted to mean specific geographical locations as well as levels.

Communications Branch

David Allen,
Director

The Communications Branch is responsible for the preparation, publication and distribution of booklets, pamphlets, films, news releases, statements, speeches and other material to explain Ministry proposals, programs and legislation. The Director advises the Attorney General, Deputy Attorney General and senior Ministry officials on communications matters.

The Branch was established in 1977 in response to increased public demand for information on the activities of the Ministry and the judicial system in general.

During 1979-80, demand remained strong for the Branch's English and French pamphlets and booklets on Family Law and Small Claims Court. Requests were mainly from individuals and from teachers who asked for class sets of materials.

The Branch, with the assistance of the Policy Development Division, also was responsible for producing two new publications, a pamphlet and a 90-page booklet explaining new rights and procedures under the Provincial Offences Act, 1979. The publications, available in both English and French, were prepared as part of an extensive public information program which was launched March 31, 1980, the day the new legislation was proclaimed in force. Other

elements of the information program included newspaper and radio advertising across Ontario and the posting of informational posters at L.C.B.O. outlets, driver examination centres and licence issuing offices.

During 1979-80, the Branch commissioned a 17-minute, colour film on India. The film, entitled *Images: A Journey Through India*, was made as a result of the Attorney General's visit to that country in January, 1979. The film endeavours to dispel preconceived ideas about Indian people, and to promote a better understanding of their way of life. Distribution of the film began in March, 1980, to interested schools, libraries and community groups.

Widespread distribution continued in 1979-80 of two other films commissioned in previous years by the Branch; *Family Law Reform: Your New Rights*, and *Courtroom 32: A Day in Provincial Court* (Criminal Division).

During the year, the Branch also worked with an outside agency to prepare an extensive public information campaign to warn motorists about the dangers of drinking and driving. The campaign, which was in effect throughout December, 1979, included the use of posters, newspaper advertisements and radio.

CRIMINAL LAW DIVISION

R. M. McLeod, Q.C.,
Assistant Deputy Attorney General
and Director of Criminal Law.

The Division comprises two branches, the Crown Attorneys System and the Crown Law Office — Criminal, and is responsible for all criminal prosecutions and the provision of legal advice to the Attorney General and Deputy Attorney General in all Criminal Law matters.

Crown Attorneys System

J. D. Takach, Q.C.,
Deputy Director of Criminal Law
and Director of Crown Attorneys.

W. H. Langdon, Q.C.,
Deputy Director of Crown Attorneys.

History

Prosecution authority rested originally with the Attorney General and his officers at the capital

of Upper Canada. As the population expanded numerically and geographically it became increasingly difficult to carry out this responsibility from one central office. In 1857, authority was granted for the establishment in each county of a prosecution office under the direction of a Crown Attorney appointed by the Governor. The Crown Attorney was required to be a resident of the county, and as such was a part of the local administration of justice which included the local sheriff and the jury made up of residents of the area.

Modernization has strengthened the relationship between the Crown Attorney, with his local responsibilities, and the Attorney General, who is responsible for the administration of justice throughout the Province. In 1955, the office of Director of Public Prosecutions was created to co-ordinate the activities of the local Crown Attorneys. In 1964, authority was given for the appointment of Crown Attorneys at large, to act as special prosecutors in difficult or specialized cases. The desire for improved communication in the system gave rise in 1966 to the Crown Attorneys Association, a voluntary group of Crown Attorneys and their assistants who meet to discuss common problems, conduct seminars to keep pace with the changes in the law, and promote an interchange of personnel to deal with temporary absences or unusually busy trial schedules.

Composition Today

The Crown Attorneys' System is composed of 212 lawyers who specialize in criminal law. In Toronto, the Office of the Director of Crown Attorneys consists of the Director, the Deputy Director and three Crown Counsel, who are assigned to local offices that require temporary assistance, and who also perform various special assignments as delegated by the Director and Deputy Director. There are 47 full-time Crown Attorneys, two part-time Crown Attorneys, four Deputy Crown Attorneys in York County and 155 Assistant Crown Attorneys, 20 of whom are female.

The largest local office is the Judicial District of York, where the Crown Attorney is assisted by four Deputies and 63 Assistant Crown Attorneys. The other offices have staffs ranging in number from one to 11 lawyers. Finally, the Crown Attorneys supervise the 464 part-time

Assistant Crown Attorneys throughout the Province who are engaged on a daily basis from time to time.

Responsibilities

The Crown Attorneys' System is responsible for the conduct of prosecutions under the Criminal Code and other federal statutes such as The Juvenile Delinquents Act. Crown Attorneys also conduct prosecutions under such Provincial statutes as The Highway Traffic Act and The Liquor Licence Act. Crown Attorneys and their Assistants exercise the Attorney General's discretionary powers with respect to prosecutions. They make recommendations to the police and private citizens, who may wish to lay charges, as to the appropriate charge, and appear as counsel for the Crown at show-cause (bail) hearings for the pre-trial release of prisoners, and at trial at all levels of court. Crown Attorneys also watch over private summary conviction prosecutions and intervene if the interests of the community require it.

The following are some of the more significant achievements and/or problems of the Crown Attorneys' system during the year.

1. Inquests

By statute, the Crown Attorney is appointed as Counsel to the Coroner during inquests, and in effect, has a considerable role to play during an inquest. He examines the witnesses, and makes summations to the jury. There are approximately 300 inquests a year which the Crown Attorney, or his assistants, must attend. Many of these inquests are relatively straight-forward, but more and more the inquest seems to be becoming controversial and lengthy. During the year three inquests alone took almost one year to complete.

2. Provincial Offences Act

Several Crown Attorneys and Assistant Crown Attorneys were heavily involved with assisting our Policy Branch in the planning and implementation of the Act. They also assisted in instructing personnel from this Ministry, other Ministries, members of the legal profession, and Law Enforcement Officers concerning the new Act. All Crown Attorneys have been involved as resource persons during the break-in period of the Provincial Offences Act, advising police and other enforcement agencies

The Ministry of the Attorney General

where problems have occurred. In addition, the Crown Attorney conducts all appeals to the Provincial Court taken under the Provincial Offences Act.

3. New Judicial District of York Region

With the establishment of the new judicial district of York Region, a new Crown Attorney's office has been opened in the new courthouse in Newmarket. At the present, it will be staffed by a Crown Attorney, one Assistant Crown Attorney, and one secretary.

4. Workload and Case Backlog

Each year the Crown Attorneys' system prosecutes many complex cases. These involve conspiracy, fraud, and what might be termed "white collar" crime. Each year there are more and more of this type of case. These cases are taking longer and longer to process through the courts, and more of these cases are going to trial than in the past. As well, the trial itself is taking longer. There are many and varied reasons for this, but, society, in general, seems to be more litigious in this era. The cases themselves may involve many hours of studying wiretap transcripts and evidence, and may involve conspiracy, loan sharking, extortion, fraud, etc.

5. Backlog of Serious Cases in the Judicial District of Hamilton-Wentworth

There is a serious backlog of trials and preliminary hearings, arising from complex and lengthy cases in the Judicial District of Hamilton-Wentworth. The reasons for this backlog are many and varied. There is a Joint Forces Operation working in the Hamilton area. This comprises members of the Royal Canadian Mounted Police, the Ontario Provincial Police and the two Regional forces of Halton and Hamilton-Wentworth. As a result there is a considerable success rate in the laying of charges. By their very nature, these cases are complex and very lengthy. Another contributory factor to the backlog is the need for additional Crown Attorneys and Judges to process these cases. Perhaps the most serious reason for the delay between the laying of a charge and the final disposition of a case is the fact that only a small percentage of the defense Bar appears for the various accused in Criminal cases. As a result, due to the commitments of defense counsel, preliminary hearings, particularly, have to be heard piecemeal, a day at a time, with the result

that in some cases the preliminary hearing can stretch out over a year and sometimes two.

6. Training and Development

Each year, the Ontario Crown Attorneys' Association organizes and runs two meetings for Crown Attorneys and their Assistants. These take place in the spring and in the Fall. The Fall meeting is always held in Toronto, the spring conference moves from place to place throughout the province. Professional staff of the Crown Law Office-Criminal; also members of the Ontario Crown Attorneys' Association, attend these conferences. The meetings themselves are educational in nature, with seminars, panel discussions and lectures on legal subjects of current interest. There is an average attendance of between 120 to 150 members of the Association at each conference.

The Ontario Crown Attorneys' Association also runs a summer school. This is held at Massey College in the University of Toronto. There are three courses, one for first-year Assistant Crown Attorneys, one for second-year personnel, the third for more senior and experienced personnel. The courses are available to all members of the Crown Attorneys' Association, by invitation, members of the Crown Law Office-Criminal, lawyers in other Ministries, and Crown Counsel from other provinces, all by invitation. This year the course for all second-year personnel was devoted entirely to advocacy, with practical demonstrations, and much student participation. This year approximately 80 lawyers from the association attended, plus several lawyers from other Ministries, and Crown Counsel from other provinces.

Representatives of the Crown Attorneys' System attended conventions held for Crown Counsel in Alberta, British Columbia and New Brunswick.

Insofar as training and development for support staff goes, five personnel attended management training courses, run by our own Personnel Management Branch, and three persons attended support staff seminars run by the Civil Service Commission.

7. Law Reform

In the past four or five years, there have been a considerable number of working papers and proposals dealing with reform of criminal law in

Canada. These proposals require a response from our Ministry, both in writing and by attending several workshops throughout the year. This response, which has been shared by the Crown Law Office-Criminal and the Crown Attorneys' system, requires that considerable time be spent in studying the proposals, preparing position papers, and recommending several changes to the Criminal Code which have been acted on by the federal government. Representatives of the Crown Attorneys' system attended the Uniform Law Conference in Charlottetown, Prince Edward Island.

8. Criminal Code Review

Senior officials of the Crown Attorneys' system are members of the Government Consultation Group concerned with reviewing the Criminal Code. They meet regularly with the members of the Canadian Law Reform Commission. The group itself consists of members from each province, together with personnel from the federal government. This group was set up approximately one year ago to enable the Provincial governments to have input as to the direction the criminal law is taking. The group meets regularly for three-day sessions, wherein various parts of the Criminal Code receive in-depth study and analysis. Members of this Ministry will continue to form part of this group in following years.

9. Federal-Provincial Task Force on Evidence

In August, 1977, the Uniform Law Conference created a Federal-Provincial Task Force on the law of evidence for the purpose of creating a Uniform Evidence Act (civil and criminal) for Canada. Ontario was represented, as were a number of other provinces and the federal Justice Department, by legal officers from the civil and criminal sectors of the Attorney Generals' departments on a part-time basis. In August, 1979, at Saskatoon, the Conference agreed to create a special research group on a full-time basis to assist the part-time representatives in expediting completion of the Act and the final report. Ontario, Quebec, Alberta and Canada contributed a full-time member for this group. Ontario's representative was taken from the senior experienced personnel of the Crown Attorneys' system and served full-time for 14 months. During this period the Task Force completed a study of and recommendations on 27 identified

areas of the law of evidence. Approximately 38 areas will be dealt with in the final report.

In February 1981, in Ottawa, the final report and completed statute will be examined by representative groups from all provinces and the federal Department of Justice.

10. Regional Crown Attorneys

In 1976 a regionalization program was instituted in which nine existing Crown Attorneys were designated as Regional Crown Attorneys. The Regional Crown Attorneys meet regularly in Toronto with the Director, the Deputy Director and, upon occasion, the Attorney General. The regionalization program enables the Regional Crown Attorney to bring matters of regional concern to the attention of the Director, to confer with other Crown Attorneys within their region and the other Regional Crown Attorneys. Regionalization also has regularized the relief system concerning often occurring shortages of manpower, and has strengthened the principle of a uniform administration of justice without undermining the significant contribution local Crown Attorneys have made and will continue to make in the future.

In addition, Regional Crown Attorneys serve on several sub-committees of the Regional Crowns' Council. These committees meet and deal with urgent topics such as uniformity of criminal law, duties of the Clerk of the Peace, education, etc.

11. Provincial Prosecutors

There are 38 provincial prosecutors employed throughout the province, one of whom is a woman. They are assigned to larger Crown Attorneys' offices, particularly those with heavy traffic caseloads. Provincial prosecutors are considered paraprofessionals; they are lay persons, usually with a background in law enforcement. They represent the Crown in Provincial Offences Court, regularly appearing opposite lawyers. They perform a vital and useful function in the Crown Attorneys' system. In several jurisdictions they represent the Crown on Provincial Offences Act appeals taken in the Provincial Court (Criminal Division).

12. French Language Services

French Language Services are being rapidly expanded by the Ministry to cover all areas of the province with a significant French speaking

The Ministry of the Attorney General

population. The Crown Attorneys' system has 29 bilingual lawyers, who are able to conduct trials in French. These lawyers are spread throughout the Crown Attorneys' system, and are assigned to attend in other jurisdictions to conduct trials in French, at the direction of the Director or Deputy Director. The Crown Attorneys' system has more bilingual professional staff than any other branch of the Ministry.

13. Affirmative Action

The Crown Attorneys' system is fully committed to the principles of Affirmative Action. Presently, there are 20 female Assistant Crown Attorneys. This is an increase of 600 per cent in the last four years. Female lawyers in the system have access to all training and development programs, and are encouraged to compete for more senior positions. Insofar as our support staff goes, an attempt is being made to upgrade female employees by on-the-job training. There are two such programs currently in progress, one where a secretary is being trained as a provincial prosecutor, the other where a secretary is being trained as an office manager.

This year, a female Assistant Crown Attorney represented, for the first time, the Crown on the James Bay circuit of the Provincial Court, at Attawapiskat and Fort Albany.

14. Highway Safety

The Crown Attorneys' system has a firm commitment to the promotion of highway safety. There is a strict policy concerning the prosecution of drinking drivers, with particular reference to second and subsequent offenders. During the Fall conference one complete day was set aside and devoted to highway safety. In addition, the Deputy Director is a member of the Ontario Traffic Safety Council, which meets monthly to discuss traffic safety matters of mutual interest to the police, the Ministry of Transportation and Communications, the Ministry of the Solicitor General, the Ontario Police Commission and the Ministry of the Attorney General.

15. METFORS

In the summer of 1977, the Metropolitan Toronto Forensic Service (METFORS) began its operations in two floors of the Queen Street Mental Hospital at 999 Queen Street West, Toronto. METFORS is governed by a Board consisting of the Chairman,

Mr. Peter Rickaby, Crown Attorney for York; a representative from each of the Ministries of Health and Corrections and the Clark Institute; and the Director, who meet once a month to review the METFORS' operation.

Prior to the implementation of METFORS, notwithstanding the efforts of all concerned, substantial delays were experienced in obtaining Court-ordered mental assessments of accused persons. The Courts are interested in the mental stability of a newly arrested accused (if he appears to be suffering from some mental disorder), which might affect his attendance for trial if released on bail, or result in danger either to the public or himself if he were released from custody. The Court also is interested in his fitness to stand his eventual trial.

METFORS is able to provide the Courts within two or three days of the date of arrest with a thoroughly researched assessment which may guide the Courts in determining the often delicate question of bail and the other issues referred to earlier.

Crown Law Office — Criminal

H. F. Morton, Q.C.,
Director

H. G. Black,
Deputy Director

Composition

The Branch comprises 23 lawyers, all of whom are specialists in criminal law. While the total caseload has again increased substantially, the number of criminal lawyers in the Branch has not been increased. This has resulted in a sharp increase in the individual workload borne by counsel.

1. Criminal Appeals

Criminal appeals to the Supreme Court of Ontario, Court of Appeal and Supreme Court of Canada constitute the Branch's major responsibility and encompass a large portion of our workload due to the increased complexity of the appeals and the increased frequency of court sittings.

2. Special Prosecutions

In the past year, the Branch has continued to prosecute an increasing number of offences which have been referred to as organized crime

prosecutions. As a result of a Tri Force approach to police investigation in this area, charges have been laid against approximately 410 persons involved in organized criminal activities in the past two years. Among the charges are several involving complex conspiracies. Others involve loansharking, extortion, counterfeiting, gambling, burglary, theft, forgery and fraud. There have been several other intensive criminal investigations into patterns of criminal activity that are planned and organized by persons acting in concert.

By way of one example of the significance of the close consultation between Crown prosecutors from this office and the joint forces operations composed of police officers of the Royal Canadian Mounted Police, the Ontario Provincial Police and the Metropolitan Toronto Police Department, is the recent investigation into the waste disposal industry in Metropolitan Toronto. This lengthy investigation led to a series of serious criminal charges laid against the principals of a large waste disposal company operating in Metropolitan Toronto and other areas of southwestern Ontario. It also brought to light allegations of corruption among municipal employees and has led to a host of charges including conspiracy, fraud, theft and bribery which are all currently before the courts.

Counsel in the Crown Law Office are consulted by and advise members of the Task Force at regular intervals in the course of every major investigation. Virtually all of the prosecutions arising out of the Tri Force Unit are handled by counsel from the Crown Law Office – Criminal. Counsel in the Crown Law Office have participated in intensive courses dealing with the prosecution of organized crime at Cornell University.

In addition, the Branch has continued to prosecute an ever-increasing number of complicated commercial transactions involving allegations of fraud, corruption, conspiracy, frauds on the government and obstruction of justice. These prosecutions are complex and take a large amount of preparation and trial time. Liaison with the Fraud Squad and the Internal Affairs Branch of the Metropolitan Toronto Police, the Ontario Provincial Police and the Royal Canadian Mounted Police is an important feature of the Branch's activities in order to provide the specialized prosecutorial assistance needed not only at a trial level, but also from the outset of the investigation in most cases. The Ontario

Securities Commission is referring an increasing number of complex investigations involving stock market frauds and manipulations. Consumers protection legislation has also added to the burden of this Branch with special prosecutions under these statutes.

3. Other Court Appearances

Court appearances by lawyers in the Branch also encompass diverse matters involving various provisions of the Criminal Code of Canada and the Provincial Statutes of Ontario.

Appearances on judicial interim release hearings in murder cases, pre-trial judicial interim release review hearings, release pending appeal applications, extraordinary remedies, the frequency of which has increased dramatically over the past few years, contested motions and summary conviction appeals in Weekly Court and Chambers necessitate daily attendance in the Supreme Court of Ontario. Weekly Court and Chamber matters also include mandamus, prohibition, certiorari and habeas corpus applications and Juvenile Delinquent appeals requiring further appearances by counsel. Counsel appear on applications for leave to appeal and appeals to the Supreme Court of Canada which are heard every two weeks. When such applications are granted, there are more lengthy and subsequent appearances which are required for the hearing of the appeal. The increased incidence of applications for judicial interim release and bail reviews, in spite of procedural adjustments to standardize court dates for the latter, necessitates daily appearances of at least two lawyers to ensure that the Crown's case is properly advanced and dangerous offenders are not at liberty prior to their trials.

4. Advisory Responsibilities

One of the functions of the Branch is to create, within its personnel, a level of expertise in selected specialized areas of criminal law and procedure so as to be able to provide advice to others involved in the administration of justice in the Province who require legal opinions, often on an emergency, or, at least, short-notice basis. To this end, the lawyers in the Branch are constantly encouraged to involve themselves in private research and a variety of academic pursuits including the writing of text books and articles for publication and participating in continuing legal education programs and seminars. Several lawyers in the Branch participate as instructors in The Law Society Continuing Education Programmes, in the

The Ministry of the Attorney General

Bar Admission Course, Criminal Law Section, and the Canadian Bar Association Continuing Legal Education Programmes.

This advisory function also extends to the delivering of lectures and conducting of seminars at many Ministry-sponsored courses for Provincial Judges, Crown Attorneys and Justices of the Peace and at similar courses conducted by various police and regulatory agencies.

During the past year developments in the administration of criminal justice have prompted renewed interest into a number of complex legal issues. These have all required counsel in the Crown Law Office — Criminal to conduct intensive legal research, formulate legal opinion and exercise sound legal judgment. They have included issues as diverse as the confidentiality of search warrant information, the exercise of prosecutorial discretion, constitutional issues peculiar to the administration of criminal justice in Canada, and the impact of modern investigative techniques on the private lives of Canadian citizens.

5. Committee Work

In the past year, the participation of members of the Crown Law Office — Criminal on various interministerial Committees has increased. Members of our office have participated on Committees dealing with inter alia, drinking/driving, seatbelt usage, highway safety, traffic tribunals, the drinking age, foreign investment, hypnosis, hypnotherapy and psychiatry. In addition, the Crown Law Office is providing intensive legal counsel to The Study of Sects, Cults and Other Groups in Ontario chaired by Dr. D. G. Hill. Counsel in the Crown Law Office also staff the Criminal Justice Advice Service for the victims of racially motivated criminal offences.

6. Justice Policy

In the past year, the Crown Law Office expanded its involvement in the formulation of justice policy matters in the area of criminal law. The most prominent areas of our involvement are as follows:

(i) Drinking-Driving:

The office has a mandate to design, legislate and implement a 24-hour licence suspension system in conjunction with a check stop operation which will be based upon the use of a roadside screening device.

This endeavour is the most recent undertaking by the Crown Law Office in its continuing attempt to reduce the magnitude of the problem of drinking-driving in the Province of Ontario.

(ii) New Provincial Offences Act:

Counsel in the Crown Law Office have been responsible for the design and drafting of the Provincial Offences Act and the Provincial Courts Amendment Act, including all steps preparatory to introduction of the legislation, consultation on systems design, and interministerial consultation and co-ordination. This undertaking included the preparation of a detailed analysis and explanation of the above legislation for distribution to M.P.P.'s and the public at large, together with planning and delivery of seminars for Judges, Justices of the Peace, the police, Crowns, etc.

(iii) Outstanding Fines:

This undertaking included the preparation of fines, together with work on the Interministerial Committee on the Vehicle Registration System.

(iv) Diversion:

In the past year, counsel continued to spend considerable time in examining this concept in preparation of a Ministerial policy.

(v) Community Service Orders:

In May, 1977, the Honourable R. Roy McMurtry, Q.C., Attorney General for the Province of Ontario, announced his decision to implement a program under which persons convicted of non-violent Criminal Code offences might be ordered by a Court to perform community service under supervision and thereby help repay their debt to society.

A Community Service Order is a non-custodial sentencing disposition whereby an offender serves his sentence by performing a prescribed number of hours of community service. Examples of community service could include: maintenance work for senior citizens and the handicapped such as lawn cutting or snow shovelling and assisting in athletic or recreational programs. Community service orders could also include activities such as pollution cleanup of parks and other public property which would otherwise have to be performed by volunteers or simply go undone. The type of work to be carried out under the Community Service Order program will not eliminate any existing jobs or employment opportunities for persons in the Community.

(vi) Human Rights and Race Relations:

Counsel in the Crown Law Office are engaged in work in this field on an ongoing basis. This involves:

- (a) attendance at all meetings of the Ontario Human Rights Commission (two days per month);
- (b) liaison with the Ontario Human Rights Commission on all matters of mutual concern;
- (c) handling hate literature complaints;
- (d) attending meetings of the Urban Alliance on Race Relations, which operates three pilot projects on which police officers and community members work together on a committee which deals with race relations matters;
- (e) work on a subcommittee of the U.A.R.R. which is preparing a booklet explaining police powers and duties in racial confrontations;
- (f) design of a racial attack response system, which will be operated out of this Ministry to assist complaints in laying and prosecuting charges;
- (g) co-ordination and preparation of the government's response to the Udale Report;

(vii) Traffic Tribunals:

The Crown Law Office was responsible for the introduction of the traffic tribunal concept to the Borough of North York in 1974 and has maintained its supervisory role on a continuing basis, including the expansion of the concept to three other Metro Toronto Boroughs in 1977. In light of the success of the tribunal concept, and the recommendation of the Select Committee on Highway Safety that the concept be further expanded, counsel in the Crown Law Office will continue to supervise its operation.

(viii) Response to Royal Commissions, etc.:

The Crown Law Office continues to draft Ministry policy, in response to various Royal Commissions. In past years, we have reviewed and responded to both the Shapiro Report of the Royal Commission on the Toronto Jail and Custodial Services and the Ombudsman's Report on Adult Correctional Institutions.

Currently we are working on issues raised by the Krever Royal Commission and the McDonald Inquiry concerning Certain Activities of the Royal Canadian Mounted Police.

(ix) Bilingual Legal Services:

The Crown Law Office has prepared a study of the bilingual trial system in Montreal.

7. Law Reform

In the past four or five years, there has been a considerable volume of working papers and proposals dealing with reform of criminal law in Canada. These proposals require a response from our Ministry, both in writing and by attending several workshops throughout the year. This response, which has been shared by the Crown Law Office — Criminal and the Crown Attorneys system, requires that considerable time be spent in studying the proposals, preparing position papers, and recommending several changes to the Criminal Code which have been acted on by the federal government.

The Ministry has also continued its participation on the federal-provincial task force developing uniform rules of Evidence.

8. Extradition

With the advent of white collar crime, international criminals and swift means of travel, and the nearness of international borders, we are now finding that this Branch is called upon almost daily to proceed with extradition hearings of criminals who have travelled across international borders to escape Canadian criminal law. To prosecute the international criminal, it is now becoming necessary to apply for Letters Rogatory and orders to take Commission Evidence in foreign countries. In co-operation with the foreign authorities, we reciprocate and assist them with their requests for extradition, Letters Rogatory and Commission Evidence.

9. Other Responsibilities

This Branch also handles various administrative matters in the criminal justice field, including transfer of charges under the Criminal Code, transfer of probation Criminal Records Act, the Lord's Day Act and many prosecutions under provincial and federal statutes other than the Criminal Code of Canada. Another time-consuming responsibility is the administration of the Protection of Privacy Act in reference to wiretap authorizations. Advice and assistance, involving the preparation of formal opinion to other government departments, local Crown Attorneys and others involved in the

The Ministry of the Attorney General

administration of justice in Ontario, constitutes an important part of the Branch's workload.

CIVIL LITIGATION AND LEGAL ADVISORY SERVICES

Blenus Wright, Q.C.,
Assistant Deputy Attorney General

The Assistant Deputy Attorney General is responsible for the operation of the Crown Law Office — Civil Law, which is divided into the Constitutional Law and Civil Law Divisions, and the Common Legal Services Branch, which provides legal advice and legal services to all Ministries of Government. He deals with conflict of interest matters and is the Attorney General's representative on the Rules Committee of the Supreme and County Courts, and the Law Foundation of Ontario.

Constitutional Law

John Cavarzan, Q.C.,
Director

The Division consists of five lawyers, including the Director.

The regular functions of the Division include advising all ministries on constitutional questions, reviewing litigation in Ontario courts and in the Supreme Court of Canada in which constitutional questions are raised, and engaging in such litigation where advisable.

Federal-Provincial Conferences

In the previous annual report, a detailed outline was given of the greatly expanded role of the Division in connection with the continuing series of federal-provincial constitutional conferences on amendment of the British North America Act, and on proposals for disentanglement of federal and provincial government programs. Two federal elections and the approach of referendum day in Quebec has resulted in a shift in emphasis, during the current fiscal year, from the ongoing constitutional review process to the proposals generated in the referendum debate in Quebec.

The Division has continued to maintain close liaison with the Ministry of Intergovernmental Affairs and with other interested ministries.

Members of the Division assisted at the following federal-provincial conferences during the year:

Meeting of the Council of Provincial Justice Ministers

September 9-11, 1979

Continuing Committee of Ministers on the Constitution

October 22-23, 1979

Continuing Committee of Officials on the Constitution

November 15-16, 1979

Federal-Provincial Conference of Deputy Ministers Responsible for Criminal Justice

February 11-13, 1980

Each of the above conferences required extensive preparation of materials and follow-up work to implement decisions taken and generally to advance the goals of the conferences.

Litigation Services

With respect to the normal operations of the Division, the Attorney General received 28 notices of constitutional questions being raised in the Ontario courts and 19 notices of constitutional issues in cases before the Supreme Court of Canada. These notices require analysis of the questions involved and assessment as to the advisability of the Attorney General of Ontario being represented. In the result the Division represented the Attorney General of Ontario in 21 cases. In addition, members of the Division co-operated with members of the Civil Law Division and the Crown Law Office (Criminal) in questions arising in matters dealt with by them.

Important cases in the Supreme Court of Canada in which the members of the Division took part during the year include:

Dominion Stores Ltd. v. The Queen

Dominion Stores Ltd. was charged under the Canada Agricultural Products Standards Act with having in possession for sale apples under a grade name prescribed under that Act which did not meet the prescribed standards of quality. At the outset of the proceedings a preliminary objection was taken on behalf of Dominion Stores Ltd. that the federal regulations were ultra vires insofar as they purported to apply to local trade in the Province. The provincial judge

gave effect to this objection. He stated a case for an appeal against his judgment. The High Court of Ontario and the Court of Appeal for Ontario reversed the provincial judge and held that the regulations were valid. On appeal to the Supreme Court of Canada it was held that the regulations were invalid in their application with respect to local trade in the Province.

Reference as to Powers of Parliament to Abolish or to Make Changes in the Character of Senate

The Governor General in Council referred two questions to the Supreme Court of Canada, namely, whether Parliament had authority to abolish the Senate and whether Parliament had authority substantially to alter the nature of the Senate. The Attorney General of Ontario intervened to argue against Parliament having this power. The Supreme Court of Canada held that Parliament did not have the authority.

R. v. Ritcey

This was an application for certiorari in the courts of the Province of Nova Scotia to quash various acquittals and sentences made by a county court judge after his resignation, in matters which he had heard before his resignation. The Judicature Act of Nova Scotia provided that after his resignation a judge had eight weeks to give judgment on matters that he had heard before. The courts of Nova Scotia had held that this provision in The Judicature Act was ultra vires in its application to criminal proceedings. A similar provision is contained in The Judicature Act of Ontario. The Attorney General of Ontario intervened in the appeal to the Supreme Court of Canada to support the validity of the provincial legislation. The Supreme Court held that the provincial legislation was intra vires the powers of the provincial legislature as legislation in relation to the administration of justice.

R. v. Aziz

In this case, the Attorney General of Canada preferred an indictment against the accused for the offence of conspiracy to commit an indictable offence under the Narcotic Control Act. The offence of conspiracy is created by the Criminal Code. The court of Appeal for Quebec held that the indictment was invalid. The

preferring of the indictment for a criminal offence is an essential part of the responsibility and authority of the Attorney General for the Province to supervise and control the enforcement of the criminal law as part of the provincial responsibility for the administration of justice and is within his exclusive authority. The case is under appeal to the Supreme Court of Canada and the Attorney General of Ontario has intervened to support the authority of the Attorney General of the Province.

Canadian Pioneer Management Ltd. et al. v. Labour Relations Board of Saskatchewan et al.

The plaintiff corporations, federally incorporated trust and insurance companies, challenged the jurisdiction of the Saskatchewan Labour Relations Board to certify bargaining units for purposes of collective bargaining. They alleged that their employees were engaged in "banking" activities and in insurance activity extending to more than one province in Canada. The Saskatchewan courts had upheld the applicability of the provincial labour relations legislation. The Attorneys General of Ontario and of several other provinces intervened to support Saskatchewan in this case. The Supreme Court of Canada upheld the decision of the Saskatchewan Court of Appeal and, in the process, supported regulation by the provinces of the insurance business and of non-bank financial institutions.

R. v. Boggs

The Supreme Court of Canada has granted leave to appeal on the question of the constitutional validity of the Criminal Code provision creating the offence of driving while one's licence has been suspended pursuant to provincial law. The appeal will likely be heard in the Spring term.

The following cases in other courts are also of significance:

Shoal Lake Band of Indians No. 39 et al. v. The Queen in Right of Ontario

This was an application by way of judicial review to set aside the decision of the provincial Ministry of Natural Resources made under the federal Ontario Fisheries Regulations establishing quotas for fishing for pickerel in Shoal Lake. It was argued that the action of the Ministry in establishing the quotas was ultra vires and beyond the constitutional powers of the provincial

The Ministry of the Attorney General

authorities and that even if it was constitutional the procedure in establishing the quotas was unfair. The case raised questions of legislative authority in relation to fisheries, Indians and public lands. Both arguments were rejected and it was held that the quotas were validly established and should not be set aside.

R. v. Hoffmann-La Roche Ltd.

The Attorney General for Canada preferred an indictment against the accused charging the accused under section 34(1)(c) of the Combines Investigation Act with selling its drugs, librium and valium, at unreasonably low prices to hospitals across Canada having the effect of or tending or designed to substantially lessen competition or to eliminate competitors. By way of defence it was argued that the Attorney General of Canada had no authority to prefer the indictment. It was argued that since the Combines Investigation Act has been held to be within the authority of Parliament relating to the enactment of criminal law, the exclusive authority to prefer an indictment was vested in the Attorneys General of the Provinces as part of the administration of justice. The Attorney General of Ontario intervened to argue that the Attorney General of Ontario had exclusive authority to prefer the indictment. The trial judge held that the Combines Investigation Act fell within the authority of Parliament, not only under the heading, "Criminal Law", but also as legislation in relation to the "Peace, Order and Good Government of Canada" and in relation to "The regulation of Trade and Commerce". He therefore held that the indictment had been validly preferred by the Attorney General of Canada. The case is under appeal to the Court of Appeal.

Reference re Residential Tenancies Act, 1979

The Lieutenant Governor in Council referred to the Court of Appeal of Ontario for hearing and consideration two questions relating to The Residential Tenancies Act, 1979, namely, whether it is within the legislative authority of the Legislative Assembly of Ontario to empower the Residential Tenancy Commission, a commission whose members are appointed by the Lieutenant Governor in Council, to make orders evicting a tenant or orders requiring landlords and tenants to comply with obligations imposed under The

Residential Tenancies Act, 1979. The argument attacking the validity of the legislation rested on section 96 of the B.N.A. Act. It was argued that the Residential Tenancy Commission was given the powers of a Superior Court and that the members thereof should be appointed by the Governor General in Council of Canada as judges of Superior, District or County Courts. The Court of Appeal for Ontario held that the establishment of the Residential Tenancy Commission with powers to make orders of eviction or compliance was beyond the authority of the Legislative Assembly of Ontario. The case is under appeal to the Supreme Court of Canada.

R. v. Cottrell Forwarding Co. Ltd.

This was an appeal by way of stated case to the Supreme Court of Ontario from a decision of the Provincial Court (Criminal Division) finding inapplicable, on constitutional grounds, certain provisions of The Public Commercial Vehicles Act of Ontario. The accused company carries on business as a freight forwarder without the requisite licence under The P.C.V. Act.

The accused company maintained that because it arranges for interprovincial transportation of goods by a combination of truck and railway transport, it is subject to regulation of its business only by Parliament. This matter was heard in February and March, and a decision is pending.

Sandy v. Sandy

The Ontario Court of Appeal held that The Family Law Reform Act applies to Indians, but not to their real property situated on a Reserve.

R. v. Pool World

The validity of The Retail Business Holidays Act was upheld in proceedings in the Provincial Court (Criminal Division).

Fred Astaire Dance Studios (F.A.D.S.) and Kester

This case involves a challenge to provincial jurisdiction to enact The Business Practices Act arising in the prosecution of the dance studio and its officers under the Act. The provincial legislation has been upheld in County Court. However, appeal to the Court of Appeal is now pending.

**R. v. Cambert Automotive Transmission
operating as AAMCO Automotive Transmissions**

The constitutional validity of The Business Practices Act was challenged in the Provincial Court in the trial of charges laid under the Act. The Court held that the legislation which prohibits specified unfair practices is valid and is not criminal law within the exclusive jurisdiction of Parliament. An application for judicial review has been filed.

**Ontario Public Service Union v. Attorney
General of Ontario**

The provisions of The Public Service Act prohibiting public servants from engaging in some forms of partisan political activities was challenged on the ground that they interfere with federal elections and the fundamental rights of Canadian citizens. The Supreme Court of Ontario upheld the validity of the legislation. An appeal has been launched.

R. v. Dagmar Construction Ltd.

This was an appeal to the Divisional Court from a decision of the County Court upholding the conviction of the accused for violation of The Construction Safety Act. The validity of the Act was challenged on the ground that section 14(3), requiring adherence to safety standards, was criminal law. The Divisional Court ordered a new trial of the charges on other grounds.

Advisory Services

The Division was called on for legal opinions and advice on the constitutionality of both provincial and federal legislation and proposed legislation, on a wide variety of subjects. In addition, members of the Division participated in the proceedings of six interministerial committees primarily to provide advice on constitutional issues.

Statistical Summary for Fiscal Year 1979-80

Litigation	79/80	(78/79)
Notices of constitutional issues given under section 36, Judicature Act	28	(26)
Notices of constitutional issues from Supreme Court of Canada	19	(16)

Constitutional Cases undertaken (argued or assistance provided)	23	(19)
---	----	------

Written Opinions and Advice (includes opinions requested on proposed federal and provincial legislation)	47	(43)
--	----	------

Many Informal Opinions given in meetings and consultations with other Ministries

Meeting of the Council of Provincial Justice Ministers	1	}	(10)
Federal-Provincial Conference of Deputy Ministers Responsible for Criminal Justice	1		
Continuing Committee of Ministers on the Constitution	2		
Participation in Interministerial Committees	6		(4)

Program of Operations for the Fiscal Year 1980-81

The Division does not initiate legislative or administrative programs but simply renders legal services on demand on behalf of the Government of Ontario. The Division was established about three years ago. It is expected that with the increased expertise acquired by members of the Division, services may be rendered with increasing efficiency in the future.

In the past year, there has been an increase in the number of requests for opinions. The figures do not reflect the fact, however, that the questions investigated for such opinions are becoming increasingly complex. Each such opinion requires a substantial time commitment on the part of Division counsel and support staff.

Civil Law

Julian Polika, Q.C.,
Director

The Branch consists of 20 lawyers, including the Director, and provides independent legal service for all Ministries of the Government, especially in the area of civil litigation.

Workload

There has been no abatement in the growth of the amount of work in the Branch. The total number

The Ministry of the Attorney General

of cases assigned was 3,216 as opposed to 2,049 for the previous year. As of March 31, 1980, there were in excess of 2,500 cases on hand as opposed to 2,100 cases for the previous year. As in the past, approximately 25 per cent of new cases handled were in the area of serious litigation, that is applications for judicial review, Supreme Court of Ontario actions or actions in other Courts such as the Federal Court of Canada.

Approximately 30 per cent were motor vehicle actions in all levels of court. Some 230 opinions were provided.

Serving the Ministry of the Attorney General

The Branch provides a complete legal service for the Ministry and, in the area of Civil litigation and opinions, the work has increased and become more varied. In particular, there has been an increase in litigious and advisory matters involving sheriffs and the Court system. The Branch has also been involved in a great number of interpleader applications.

Serving Other Ministries

Work done for the Ministries continues to increase and involves appearances on behalf of the Government in civil litigation in Small Claims Court, in the County, Supreme and Federal Court Trial Divisions, and in appeals in applications before the Divisional Court, Court of Appeal for Ontario, Federal Court of Appeal and Supreme Court of Canada.

The Branch also appeared before various boards and tribunals and conducted provincial prosecutions on behalf of a number of Ministries. For those Ministries and other governmental bodies who are not served by the Common Legal Services program the Branch provided a complete legal service.

Law Reform

Over the past few years, there have been a considerable volume of reports, working papers and proposals dealing with the reform of provincial law. These proposals have required response from the Ministry. The Branch has shared in the response by writing and participating in programs and seminars throughout the year.

The Branch has a permanent delegate on the federal-provincial task force developing uniform Rules of Evidence and has carried its share

in the preparation of background papers for discussion by the task force.

The enactment of The Provincial Offences Act, 1979 has required the provision of educational programs by the Ministry for those individuals involved in that aspect of the justice system. Counsel from the Branch has assisted in the conduct of such programs.

Particular Services Rendered

1. Judicial Review

Under The Judicial Review Procedure Act, the Attorney General is entitled to be heard in person or by counsel in all matters of judicial review and, by statute, all applications for judicial review must be served upon the Attorney General. At the time of service, applications are examined to determine whether an intervention will be made on behalf of the Attorney General or whether the Branch will be acting on behalf of a named party. In the fiscal year 1979/1980, 274 applications for judicial review were received and counsel for the Branch intervened or appeared on behalf of parties in 111 of these applications.

2. Claims for and against the Crown

Pursuant to The Proceedings Against the Crown Act, a Notice of Claim must be served upon counsel in the Branch before an action is brought against the Crown. This enables counsel to investigate the claim before an action has begun to determine what the position of the Crown will be and whether a settlement is possible. The Branch handles the full range of claims available in law except for certain technical subjects requiring particular expertise such as patents or trademarks.

In the fiscal year 1979/1980, the Branch opened 465 such files, excluding claims pertaining to motor vehicle accidents, mechanics' liens and expropriation matters.

3. Motor Vehicle Accident Claims

The Branch acts on behalf of the Government in respect of motor vehicle accident claims where the Government or an employee of the Government has a claim against an individual. Claims against the Government where the Government has no counter-claim are handled by our insurers' counsel. These claims are first handled by the Claims Director; if settlement is not possible an action is brought in the

appropriate level of Court, counsel assigned and the matter brought to completion. In the fiscal year 1979/1980, 713 such claims were received.

4. Mechanics' Lien Actions

As of January 1, 1976, The Public Works Creditors Payment Act was repealed and the Crown, save for the Ministry of Transportation and Communications, was made subject to the provisions of The Mechanics' Lien Act with the exception that a lien could not be attached to property of the Crown. In the fiscal year 1979/1980, 87 such actions were handled by the Branch.

5. Expropriations

Over the last three years the Branch developed expertise in the area of expropriations. On behalf of the Ministry of Transportation and Communications and the Ministry of Government Services, the Branch now handles matters before the Land Compensation Board and, if need be, in the Courts. In the fiscal year 1979/1980, 24 such matters were handled.

6. Boards and Tribunals

The Branch provides counsel service and advice to various Boards and Tribunals, for example, the Game and Fish Hearing Board, The Environmental Assessment Board, the Ontario Municipal Board, the Criminal Injuries Compensation Board.

The Ontario Human Rights Commission continues to make use of the Branch. Counsel have appeared on behalf of the Commission on Boards of Inquiry ordered by the Minister of Labour to investigate alleged breaches of the Ontario Human Rights Code.

In the fiscal year 1979/1980, 108 cases were handled in this particular area.

7. Her Majesty's Proctor

Pursuant to the Matrimonial Causes Act, the position of Her Majesty's Proctor was created to provide an independent officer to assist the Courts in divorce actions and other related matrimonial causes. Counsel within the Branch appear regularly in respect of applications made by a spouse in a divorce action to prevent the issuance of a decree absolute. The Courts also have called upon the Queen's Proctor for assistance in pending matrimonial matters. At present, the Queen's Proctor is the Director of the Branch, Julian Polika. In the fiscal year

1979/1980, 119 Queen's Proctor matters were reviewed and counsel within the office actively dealt with 44 of these.

8. Provincial Prosecutions

The Branch has been called upon to conduct provincial prosecution cases involving a particular area of expertise or when the matter transcends county boundaries. In particular, prosecutions have been conducted on behalf of the Ministry of Natural Resources under The Game and Fish Act and related statutes. In the fiscal year 1979/1980, 10 such prosecutions were conducted.

9. Advisory Services — Providing legal opinions

The Branch, in response to specific inquiries from the Ministries, provides legal opinions on a wide variety of subjects involving interpretation of Provincial statutes. These opinions may also be prepared with a view to establishing a position for a Ministry in anticipation of litigation, or as a result of litigation. In the fiscal year 1979/1980, 230 opinions were provided.

10. Legislative Advice

The Branch is frequently involved in the preparation of legislation where a change may be necessitated by a court judgment. This requires constant liaison with the Ministries concerned in order to ensure that the legislative changes conform to judicial pronouncements as well as to the needs of a Ministry. In addition, in relation to statutes administered by the Ministry of the Attorney General, legal officers are expected to recommend necessary changes and to work with the Policy Development Division and with the Legislative Council's office to see that those changes are carried out.

On a day-to-day basis, legal officers answer public inquiries pertaining to statutes administered by the Ministry.

11. Solicitors Work

The Branch provides a full range of solicitor's services to the Ministries and, in particular, to the Ministry of Industry and Tourism, which does not have its own legal branch. The Branch has conducted all solicitor's services for Ontario Place Corporation.

12. Petitions to Cabinet

Counsel in the Branch are responsible for preparing petitions to Cabinet originating primarily because of statutory provisions in

The Ministry of the Attorney General

The Ontario Municipal Board Act and The Ontario Highway Transport Board Act. In the fiscal year 1979/1980, 163 such matters were received.

Statistical Review of 1979/1980 Workload

The chart set out below shows that 2,216 files were assigned in the fiscal year ending March 31, 1980, an increase of 8.2 per cent over the preceding fiscal year. An important trend has developed in that the present level of intake is 184.7 files per month as compared to 170 for the previous fiscal year but on a more uniform basis by month.

The Director reviewed 394 matters pertaining to applications for judicial review, Queen's Proctor matters and habeas corpus applications and it was decided after consultation with the appropriate Ministry, where applicable, not to intervene in 239 of those cases.

At the close of the fiscal year on March 31, 1979, counsel in the Branch had on hand in excess of

2,500 files. These ongoing files reflect matters which take time to process and finalize.

Forecast of Operational Activities

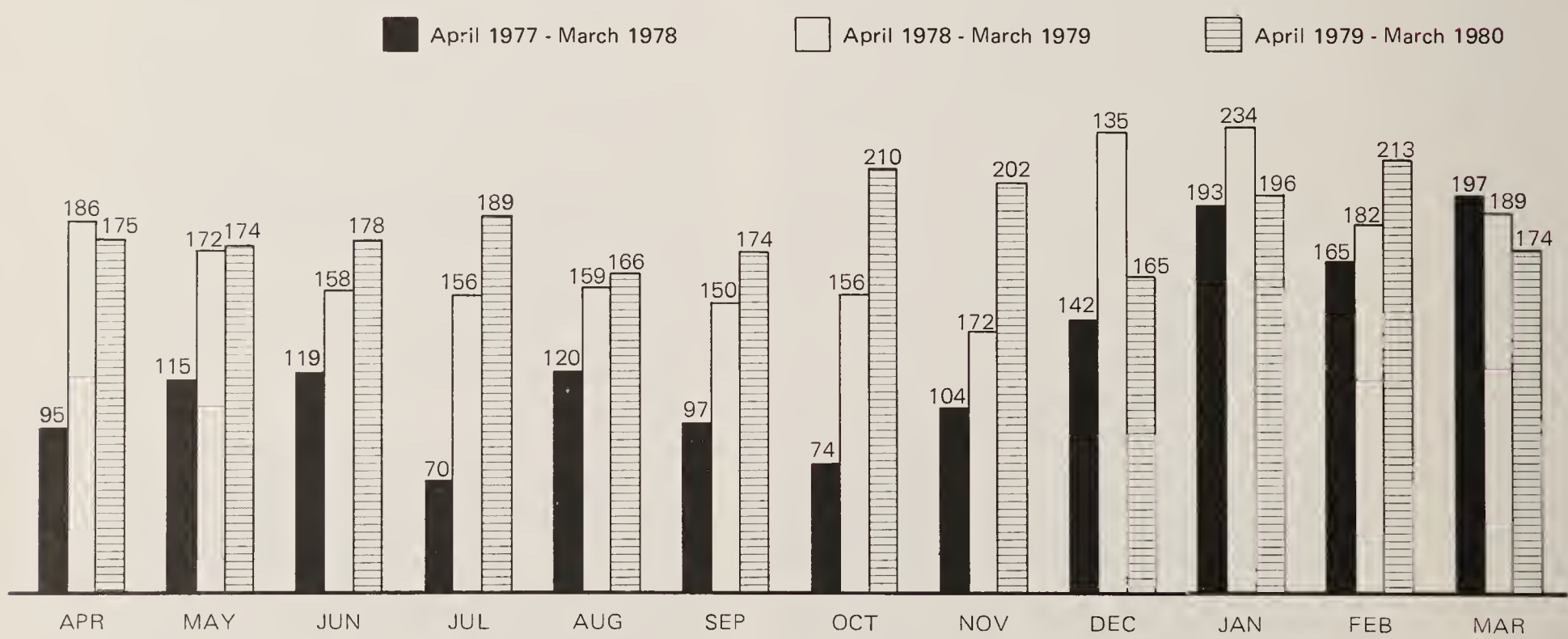
The Branch does not develop new programs and activities. The Branch, for practical purposes, simply renders legal services on behalf of the Government.

It is anticipated that during the fiscal year 1980/1981, the Branch will handle some 2,400 new cases in addition to the carryover of 2,500 cases. It is not possible to determine with any accuracy the actual increase as Branch work is determined by unpredictable factors.

French Language Instruction

In the fiscal year 1979/1980, eight lawyers on staff were on French language conversation courses. This program will continue through 1980/1981. The program is in keeping with the introduction of the French language into the Court process in Ontario.

Number of Cases Assigned by Month



Total Number of Cases for Year Ending

{ March 31st, 1978 - 1,491
March 31st, 1979 - 2,049
March 31st, 1980 - 2,216

Common Legal Services

J. B. Gleason, Q.C.,
Director

Legal Services to Ministries

The Common Legal Services program involves the provision of legal services to all Ontario Government Ministries. The Director is responsible for the development of a unified approach to legal opinions, evaluation of legal services provided, and career development.

There are 21 legal branches located in the various Ministries, varying in size up to 18 lawyers, all of whom are employed by Common Legal Services on behalf of the Attorney General. In total the Common Legal Services has 245 professional, secretarial, clerical and para-legal persons in its employ.

Common Legal Services is also responsible for retaining private sector counsel where such services are required by the Government.

Professional Development

Professional development of lawyers is a continuing objective of Common Legal Services. Attendance at educational programs offered by the Canadian Bar Association, The Law Society of Upper Canada and The Advocates Society, provides opportunities for lawyers to keep up with the changes in the law. Movement of lawyers between legal branches and promotion of employees within Common Legal Services are on the increase, creating more career opportunities for government lawyers.

Liaison with Boards, Official Guardian, Public Trustee

The Director has a liaison responsibility between the Ministry and the Assessment Review Court, the Land Compensation Board, the Ontario Municipal Board, the Board of Negotiation and the Criminal Injuries Compensation Board, the Official Guardian and the Public Trustee.

Chief Inquiry Officer

The Director spends considerable time discharging the responsibilities of the chief inquiry officer, pursuant to The Expropriations Act. This involves the retainer of and the liaison with inquiry officers throughout the Province

and a large area of communications with the public in relation to The Expropriations Act generally.

Office of the Official Guardian

L. W. Perry, Q.C.,
Official Guardian

Function

The Official Guardian provides legal services for minors, unborn and unascertained persons, mental incompetents and absentees in accordance with the provisions of Section 107(2) of the Judicature Act and The Child Welfare Act.

General

The office has a regular staff of 67 and seven law students. It also uses the services of lawyers who act as agents throughout the Province. It employs Children's Aid Societies outside Toronto and freelance social workers in Toronto to assist in investigation and preparation of reports in the increasing number of divorce and custody actions.

The Official Guardian participates in a Court Conciliation Project designated to preserve the sanctity of family life from improvident dissolution of marriages to the detriment of families in general and children in particular.

The Official Guardian was a member of the committee which revised the Rules of Practice of the Supreme Court of Ontario.

The Official Guardian provides independent representation for children in matters arising out of the Unified Family Court Project in Hamilton as well as representation for unrepresented mentally incompetent persons who refuse medical treatment under the Mental Incompetency Act. He is also an ex-officio member of the Interministerial Committee on consent to medical treatment.

Under Section 20 of The Child Welfare Act, which was implemented on February 1, 1980, the Official Guardian provides independent legal representation for children in protection cases in the Family Court.

The basis of the program is the utilization of 400 members of the private Bar who provide this legal service under the supervision of this office.

The Ministry of the Attorney General

The office prepared manuals and conducted training sessions for panel members in five areas of the Province. These sessions covered substantive and procedural law. The training staff included not only members of the official Guardian's legal and social work staff, but also representatives of the other social service and behavioural science disciplines. The courses have been accredited by the Law Society in the Family Law and Divorce preferred areas of practice.

The Official Guardian, with the assistance of members of his staff, served on the Civil Procedures Revision Committee and on the Interministerial Committee on Medical Consent and Guardianship in addition to providing an ongoing review of pending legislation related to family and child law.

The Branch continues to process applications on behalf of minors to the Injuries Compensation Board, with particular emphasis on the implications of child abuse.

The Official Guardian is also required by The Child Welfare Act to determine what action should be taken against child abusers.

Increasing Demand

The Official Guardian tries to contribute to developments in family and child law and to meet

new, related responsibilities.

The Law Reform Commissions of Canada and Ontario have strongly recommended that the law give more adequate protection of the personal rights of minors in addition to the traditional protection of their proprietary interests. Judges are now appointing the Official Guardian ad litem (counsel) to represent children in custody and access proceedings.

Another major concern is the adoption of children of unwed mothers whose consent to adoption is required and which is often obtained before a guardian ad litem is appointed and the minor mother has had independent legal advice. The Official Guardian provides legal advice to unwed mothers before they consent to adoption. This important and far-reaching development will tend to curb improper placement of children by lawyers and doctors who might inadvertently or otherwise take advantage of unwed mothers to the serious detriment of the infants concerned.

The Official Guardian continues to provide legal assistance for minors who are apprehended by Children's Aid Societies under Part II of the Child Welfare Act in cases in which there is conflict between the Societies' proposal and the wishes of the minor.

Report of Operations

The statistical data for the fiscal year 1979-80 and for the calendar years 1976 through 1979 is as follows:

Surrogate Court Audits	1976	640	(Increase in 1976)	32
	1977	594	(Decrease in 1977)	46
	1978	605	(Increase in 1978)	11
	1979	571	(Decrease in 1979)	34
Fiscal Year 1979/80 — 560				
Matrimonial Causes New Matters	1976	13,378	(Increase in 1976)	640
	1977	13,423	(Increase in 1977)	45
	1978	13,733	(Increase in 1978)	310
	1979	14,333	(Increase in 1979)	600
Fiscal Year 1979/80 — 14,091				
Number of Payments into Court	1976	232	(Increase in 1976)	43
	1977	285	(Increase in 1977)	53
	1978	274	(Decrease in 1978)	11
	1979	287	(Increase in 1979)	13
Fiscal Year 1979/80 — 278				

<hr/>				
New Fiats authorizing payments out of Court for maintenance and other purposes	1976	417	(Increase in 1976)	33
	1977	458	(Increase in 1977)	41
	1978	464	(Increase in 1978)	6
	1979	475	(Increase in 1979)	11
Fiscal Year 1979/80 – 504				
<hr/>				
Number of Payments out of Court pursuant to existing Fiats	1976	1,787	(Increase in 1976)	180
	1977	1,883	(Increase in 1977)	96
	1978	1,864	(Decrease in 1978)	19
	1979	1,856	(Decrease in 1979)	8
Fiscal Year 1979/80 – 1,877				
<hr/>				
General Counsel Work in Matters arising out of: The Child Welfare Act; The Dependents' Relief Act; The Devolution of Estates Act; The Dower Act; The Fatal Accidents Act; The Highway Traffic Act;	The Infants Act; The Settled Estates Act; The Surrogate Court Act; The Trustee Act; The Variation of Trusts Act; The Wills Act; The Insurance Act; The Mortgages Act; The Partition Act.			
	1976	1,325	(Increase in 1976)	200
	1977	2,010	(Increase in 1977)	685
	1978	1,330	* (Decrease in 1978)	680
	1979	1,299	(Decrease in 1979)	31
Fiscal Year 1979/80 – 1,337				
<hr/>				
Child Representation in Custody and Access Matters	1977	127	(Increase in 1977)	48
	1978	172	(Increase in 1978)	45
	1979	200	(Increase in 1979)	28
Fiscal Year 1979/1980 – 200				
<hr/>				
Child Welfare Counsel Work 1979 (*Previously shown under General Counsel Work)	556			
Fiscal Year 1979/80 – 823				
<hr/>				
New Miscellaneous Matters				
Numerous attendances, telephone inquiries and extensive correspondence, both with solicitors and the public about how to deal with the personal and financial welfare of infants.				
The total number of New Matters and Cases in the Years				
	1976	17,858		
	1977	18,780		
	1978	19,642		
	1979	19,577		
Fiscal Year 1979/80 – 19,680				
<hr/>				

The Ministry of the Attorney General

Forecast of Operational Activities

The Office of the Official Guardian will continue to render legal services on behalf of persons under a legal disability consisting mainly of minors and mental incompetents. It will also keep abreast of and contribute to developments in family and child law and exercise its specific responsibility to provide independent representation in relation to the Unified Family Project in Hamilton. A Branch activity will continue to be the implementation of Child Representation in Part II applications under The Child Welfare Act. This program will involve not only an accelerated delivery of legal services in these matters by staff counsel but also the development, administering, training and monitoring panels composed of some 500 solicitors from the private bar who provide this service throughout the Province.

Child Representation in Custody

and Access Matters	1980-81	350
	1981-82	400
	1982-83	500
	1983-84	600

Child Welfare Counsel Work (included under General Counsel Work in 1978/79)

1980-81	3,000
1981-82	3,500
1982-83	4,000
1983-84	4,500

Forecast of the Program and Activities for the Fiscal Year 1980/81 and the Three Succeeding Years:

Surrogate Court Audits	1980-81	600
	1981-82	600
	1982-83	600
	1983-84	600

Matrimonial Causes New Matters	1980-81	14,500
	1981-82	15,000
	1982-83	15,500
	1983-84	16,000

Payments Into Court	1980-81	300
	1981-82	300
	1982-83	300
	1983-84	300

New Fiats Authorizing Payments Out of Court for Maintenance and Other Purposes	1980-81	550
	1981-82	600
	1982-83	650
	1983-84	700

Payments Out of Court Pursuant to Existing Fiats	1980-81	2,000
	1981-82	2,100
	1982-83	2,200
	1983-84	2,300

General Counsel Work	1980-81	1,400
	1981-82	1,500
	1982-83	1,600
	1983-84	1,700

Public Trustee

A. J. McComiskey, Q.C.,
Public Trustee

Duties

The work of the office of the Public Trustee is divided into four main sections, namely:

1. The administration of estates of patients of psychiatric facilities who have been certified under The Mental Health Act or persons who have been declared incapable of managing their own affairs by Order of the Court under The Mental Incompetency Act;
2. Administering estates under the provisions of The Crown Administration of Estates Act of persons dying in Ontario intestate and without next-of-kin in Ontario;

-
3. Acting in a supervisory role over charitable organizations under the provisions of The Charitable Gifts Act, The Charities Accounting Act and The Mortmain and Charitable Uses Act;
 4. Assisting in the corporations legal field by entering into agreements to manage assets of corporations who seek to wind up their endeavours but cannot locate some of their shareholders who would be entitled to share on a final distribution, and also by supervising applications under The Escheats Act for relief and forfeiture when companies have had their charters cancelled while still being the legal owners of real or personal property.

Related to these main divisions of responsibilities the Public Trustee is frequently called upon to perform varied services to the public where there is no other individual or organization that is ready or able to perform the services. The Public Trustee acts as an executor of estates when so appointed by a testator, administers trusts under The Cemeteries Act, The Workmen's Compensation Act and The Compensation for Victims of Crime Act, and sometimes is appointed directly by the Court to act as trustee of substantial damage awards when the plaintiff in the action appears to be incapable of handling a large sum of money, although is not necessarily mentally incompetent.

General Operations

As time passes the work of the office seems to change in imperceptible ways that are only recognized after several years. Recently more lawyers have become aware of the problems created for charitable organizations by the terms of The Mortmain and Charitable Uses Act. As this Act has become better known to the legal profession, many charitable organizations and their solicitors realize that their titles to real property are defective and applications to the Court for Orders have become more frequent.

Investment policies in the office have become changed so that funds of individual estates are invested directly on behalf of that estate rather than as part of bulk investment. This program has substantially increased the return to the individual estate, but the administration of these investments does add to the work load of the office.

The total number of patients whose assets are being administered under The Mental Health Act or The Mental Incompetency Act has not increased substantially, but the turnover of estates has increased. Patients who years ago might have spent years in a psychiatric facility are now very frequently examined, placed on a medication program and released back to their families and friends. As a result, the office of the Public Trustee is asked to manage more estates for a shorter period of time.

In order to improve the communications between staff at psychiatric facilities and estates officers on the staff of the Public Trustee, efforts were made to make each branch of the service to the patients more familiar with what was done on the other side. Social workers have been invited to the office of the Public Trustee, estates officers have made visits to psychiatric facilities as observers, and representatives from the office of the Public Trustee have attended meetings at psychiatric facilities, and of community organizations and mental retardation associations to explain what services are performed by the Public Trustee.

Financial Operations

The office of the Public Trustee is not only self-sustaining but income producing. The Public Trustee receives legal fees, compensation as an executor, administrator or Committee and interest from investments made. These sources of income enable the Public Trustee to pay all of the operating expenses of the office and to show a profit which from time to time is paid to the consolidated revenue fund.

Future Role

It has been many years since the whole philosophy and operation of the office of the Public Trustee has been reviewed. I am glad to say that a Committee under Mr. H. A. Leal, Q.C., Deputy Attorney General, is now in the process of reviewing the objectives and administration of this office so that the philosophy and performance will more closely match the present needs.

The financial status of the office as at March 31, 1980 is shown in the following Statement of Revenue and Expenses and the Balance Sheet.

The Ministry of the Attorney General

Statement of Revenue and Expenditure Year Ended March 31, 1980

	<u>1980</u>	<u>1979</u>
Revenue		
Fees: Patients' estates	\$ 1,499,881	\$2,058,680
Crown estates	737,033	473,697
Special trusts	135,202	160,130
Company trusts	7,866	16,548
Cemetery trusts	18,405	17,082
Charities	52,537	40,092
	<u>2,450,924</u>	<u>2,766,229</u>
Bank interest	12,074	13,529
Income from funds invested, net (schedule B)	<u>3,932,659</u>	<u>4,184,009</u>
	<u>6,395,657</u>	<u>6,963,767</u>
Deduct debit balances written off	<u>986</u>	<u>296</u>
	<u>6,394,671</u>	<u>6,963,471</u>
Expenditures		
Salaries	2,575,781	2,408,439
Employee benefits	385,584	362,163
Transportation and communication	82,958	73,517
Services	482,903	544,316
Supplies and equipment	87,806	83,475
	<u>3,615,032</u>	<u>3,471,910</u>
Excess of Revenue over Expenditure	<u>\$ 2,779,639</u>	<u>\$3,491,561</u>

Statement of Surplus Year Ended March 31, 1980

	<u>1980</u>	<u>1979</u>
Balance at Beginning of Year	\$ 9,086,154	\$5,596,593
Less reimbursement of payment from Assurance Fund	<u>—</u>	<u>2,000</u>
	<u>9,086,154</u>	<u>5,594,593</u>
Add excess of revenue over expenditure	<u>2,779,639</u>	<u>3,491,561</u>
Balance at End of Year	<u>\$11,865,793</u>	<u>\$9,086,154</u>

Balance Sheet as at March 31, 1980

	<u>1980</u>	<u>1979</u>
Assets		
Estates and Trusts		
Cash in bank	\$ 89,514	\$ 231,753
Funds invested (schedule A)	90,140,000	85,495,000
Bonds (note 1b)	51,836,275	37,938,721
Stocks (note 1b)	5,375,292	4,038,307
Mortgages receivable	2,648,425	2,167,946
Real estate (note 1c)	27,055,523	24,837,663
Pensions and life insurance (note 1d)	27,557,055	25,332,664
Miscellaneous	3,386,490	2,181,351
	<u>208,088,574</u>	<u>182,223,405</u>
Deduct mortgages payable	1,099,170	1,036,352
	<u>206,989,404</u>	<u>181,187,053</u>
 Administration Fund Account		
Cash in bank	44,073	37,797
Funds invested (schedule A)	12,230,000	9,480,000
	<u>12,274,073</u>	<u>9,517,797</u>
	<u>\$219,263,477</u>	<u>\$190,704,850</u>
 Liabilities		
Estates and Trusts		
Patients' estates	\$157,596,265	\$136,990,105
Crown estates	17,724,852	14,138,269
Probable escheats	8,693,677	8,575,996
Special trusts	13,002,506	12,301,922
Company trusts	4,486,355	4,099,412
Indian trusts	178,101	184,513
Unclaimed balances	357,744	305,879
Cemetery trusts	4,883,075	4,524,640
Child Welfare trusts	66,829	66,317
	<u>206,989,404</u>	<u>181,187,053</u>
 Administration Fund Account		
Current liabilities	208,280	231,643
Assurance fund	200,000	200,000
Surplus	11,865,793	9,086,154
	<u>12,274,073</u>	<u>9,517,797</u>
	<u>\$219,263,477</u>	<u>\$190,704,850</u>

The Ministry of the Attorney General

COURTS ADMINISTRATION DIVISION

Brian W. McLoughlin,
Assistant Deputy Attorney General
and Director of Courts Administration

M. S. Fitzpatrick,
Inspector of Legal Offices and Deputy Director of
Courts Administration

Responsibilities

The Assistant Deputy Attorney General and Director of Courts Administration is responsible for the administration of the courts in Ontario including:

- regulating the appointments of commissioners for taking affidavits, notaries public and justices of the peace;
- provision of court reporting for all courts and supervision of court reporters and special examiners;
- ensuring the provision of adequate administrative services to all courts, including direction to sheriffs and court registrars, Criminal and Family Court administrators, Small Claims Court clerks and bailiffs;
- liaison with the Ministry of Government Services and the responsibility for court accommodation;
- French Language Services in the courts;
- maintaining liaison between the Ministry of the Attorney General and the judiciary, and the processing of judicial appointments to the Provincial Courts;
- overseeing the Ministry's interest in the Native Courtworker Program.

Supreme, County and District and Surrogate Court Offices

R. W. Schurman,
Director

B. C. Pitkin,
Deputy Director

The office of the director provides administrative direction for the Supreme, County and District and Surrogate Courts and Sheriffs' Offices. In liaison with a regional co-ordinators' council, the office develops and implements Ministry policy relating to procedures and

methods, and provides for the day-to-day delivery of the program.

In an effort to meet the growing demand for service, a number of training seminars have been conducted throughout the last year for both officials and staff. The seminars ranged in content from highly technical material for officials and their deputies, to more routine information for staff members. The seminars were greeted with enthusiasm by all participants and will be continued this coming year.

The Courtroom Procedure Manual and the Supreme and County Court Flow Chart Manual were both introduced successfully into the system during the last year. They have proven to be effective as both a teaching aid and handbook for office use. As the next step this branch has already begun a review of the Sheriff's Manual.

The new Sheriff's Manual is being expanded to incorporate many of the opinions given by the Crown Law Office over the past few years. The new manual is expected to be ready within the year for distribution, with requests having already been received from other provinces.

Implementation plans for a new Judicature Act and the proposed Williston Rules have been prepared. The Education Committee of the Sheriffs and Local Registrars are prepared to finalize a seminar program that will provide effective means of introducing the new act and rules to the court staff.

Court Reporting

Tom Moran,
Manager

The Manager, Court Reporting Services, provides administrative control of all reporting services to all Court levels throughout the Province, including Special Examinations and certain Boards and Commissions. Direction and support is also provided to the offices of Special Examiners in the private sector in Toronto, Hamilton, St. Catharines, Windsor, Ottawa and Timmins.

The establishment of reporting standards and the training and development of competent reporters continues to receive priority. With the co-operation of the Court Reporters' Association, a reporters' Manual is currently being prepared dealing with format and procedures at the various Court levels.

The George Brown College reporter program continues to be an invaluable source of trained court reporters, and the three-week in-Court experience provided at the County and Provincial Court levels to students in this course has been very beneficial.

The Chartered Shorthand Reporters' Association also offers the opportunity to reporters to upgrade their skills to C.S.R. standards by conducting special classes on Saturday mornings.

The volume, length and complexity of court cases continues to put a great strain on our limited reporting staff and again it has been necessary to expand even further the use of freelance reporters to cover the shortfall in reporter complement and to keep the courts fully operational:

During the year a number of reporter vacancies were designated as bilingual and recruitment to fill these vacancies proved successful. Bilingual reporting services are now available at all Court levels.

Provincial Court Offices

A. K. Mackay,
Director

The administrative staff of the Provincial Court Offices provide clerical, stenographic, court-support and court-reporting services for the Provincial Courts, both Criminal and Family Divisions. The staff also provides accounting, recruitment, training and other services required by the Ministry.

Government constraints over the past several years have increased the pressure on the court managers, requiring a high level of managerial skill to cope with increased workload combined with fixed manpower resources. The staffing freeze that was imposed lasted for many months and when lifted in September created a serious recruitment/training problem. The skills of our management group has permitted us to cope with these problems.

Family Law Reform Act and Legislation Pertaining to Children

The Family Law Reform Act, which came into effect March 31, 1978, created some administrative problems. The expertise gained during the past

fiscal year by all members of the Family Court staffs have now overcome most of the problems and this legislation is being handled smoothly.

Amendments to The Child Welfare Act and other children's legislation have also created new challenges for court administrators. For example, the amendments transferred adoptions from the superior courts to the Provincial Court (Family Division), which created new duties for many staff members.

As we enter our new year we are still in the transitional stage of these major reforms in family and child legislation and so an indepth analysis of the impact cannot be made. From the experience that we have obtained during the past year, there is every reason to be confident that the Family Courts will be able to absorb these changes and effectively handle the new matters being received.

Family Court Office Standards

The Family Court offices throughout the province had been operating for many years without benefit of standard office procedures and systems. During the past year a group of Family Court administrators, assisted by members of our Systems Development Branch and Audit Branch, were organized into a task force to develop a manual of office procedures. These people, called from many districts throughout the province, all were experienced Family Court administrators. Working together they developed a very fine manual of office systems. Last Fall all the court administrators, along with some senior members of their staffs, were called to regional meetings to review the new manual.

Implementation of the new systems commenced January 1, 1980, and will be reviewed annually to improve the initial program.

Provincial Offences Act

The new legislation, which received third reading in March, 1979, with an implementation date of March 31, 1980, required a complete change of both our computer and manual office systems and procedures.

A task force was organized to do the necessary work under the guidance of David Thornton, former Deputy Director of Provincial Court Offices. Norman Harris was seconded from

The Ministry of the Attorney General

Management Board to be Director of the Task Force and organized two groups, one to do the programming changes for the Toronto and Oshawa computer systems, and the other to prepare a complete manual of operations for those offices not presently on computer systems.

The task force also provided trainers to introduce the new systems to the court administrators. Several court administrators from different locations in the province were used as an advisory group and from that group the training staff was developed under the guidance of George Eno, the Ministry's training officer.

Through this major project, Chief Judge Hayes provided invaluable assistance and advice.

The manuals of operation and the training of staff were completed in December and necessary new forms were developed and printed in time for the April 1 implementation date.

The Ministry recognizes the effort of the many individuals involved in this project, and the Minister has acknowledged to each his appreciation.

The impact of the new Provincial Offences Act upon the resources of the courts will be carefully monitored but there is no doubt that it will have a major effect on court facilities and court staff, as well as on the major court users.

New Court Systems and Methods

As reported last year, a pilot project using a mini computer had been implemented in the Qshawa Criminal Division office. After a 12-month period in operation, the project appears to be a successful one.

At present, the Ministry is presenting a brief to Management Board asking for approval to implement the same system in the seven major offices, by volume of cases, outside of the Metropolitan Toronto courts.

The Metropolitan Toronto Cyclop system, now eight years old, requires a major updating and the possibility of a completely new system is under study. The introduction of the Provincial Offences Act has changed our requirements dramatically in Toronto and a report has been commissioned to ascertain the best system to meet our new needs.

Effective January 2, 1980, fines for parking offences in Toronto could be paid through any

chartered bank in the Province. During the month of February, 1980, 68,000 parking tag payments were processed through the banks. In the first two months of this new program, payments increased 11 per cent over the first two months of the previous year and over our monthly average of payments. The initial success of this bank payment system has encouraged us to investigate further use of the facilities of the private sector to assist in service to the public related to court matters.

Training and Staff Development

The Provincial Court has completed its fourth year of participation in the Ministry's Management Development Program. This program has dealt with basic management skills, effective communications, organizational and managerial behaviour, performance problems, and, in 1980-81, will enter into the area of assertive management. This training is provided in co-operation with the Ministry's Personnel Management Branch and Sheridan College of Applied Arts and Technology. The program has been designed to insure continuity from one level to another and to provide a continuing Managerial Development Program for our managers and their staffs.

Court Administrators have completed their fourth year in this program, their Deputies/Assistants and key supervising staff their third year, and employees continued to enter into the program on a "career development" basis. New supervisory staff enter the program and are accelerated to achieve a "training level" with their peers as quickly as possible. The following numbers of individuals participated during the current year:

Management Workshop (Phase I);	37
Interpersonal Communications for Managers (Phase II);	42
Management for Results (Phase III);	66
Management of Human Resources (Phase IV);	58
Total	<u>203</u>

Additional Information applicable to both Criminal and Family Courts:

Fifty employees participated in courses offered by the Civil Service Commission in the areas of Management Development, Problem Solving and Decision Making, Communications Skills and Professional Skills. In addition, 34 staff members were furnished tuition assistance for courses in various Colleges and Universities.

Small Claims Courts

Ron McFarland,
Director

The Director of the Small Claims Courts provides administrative direction to the 125 court offices throughout the Province. The Director is responsible for the planning and preparation of reports on the needs, both Judicial and Administrative, of the courts and for filling staff vacancies. The Director advises court officials on procedures, the interpretation of amendments and the up-dating of the Manuals with regard to Administration, Forms, Records, Retention, and other related matters.

Activity

The volume of claims processed through the Small Claims Court during 1979 (152,613) was approximately the same as 1978 (152,732). However, the records of the courts indicate a significant increase in money distributed by the courts — \$15,558,112 in 1979, compared to \$14,179,796 in 1978, an indication of the effectiveness of the system in resolving relatively minor monetary disputes between litigants.

The appointment during 1978-79 of Small Claims Court Referees in London, Toronto and Hamilton, as provided for in the amendments to The Small Claims Courts Act, 1977, was so successful in settling contentious matters where the sole problem was a question of collection, that additional Referees have been appointed in Elliot Lake, Haileybury, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay and Timmins.

There have been continuing efforts to maximize the use of available facilities to ensure all disputed matters are heard within 45 calendar days. During the year, a Statistical Report relating to matters

awaiting trial was introduced. The basic caseflow information is required to ensure that our commitment to a scheduling delay of no longer than 45 days is realistic and attainable and to signal the need for corrective action where it is not being achieved.

New Initiatives

In June 1979, an Act was passed to create a Provincial Court (Civil Division) for the Municipality of Metropolitan Toronto as a Special Project Court to run for a three-year period, January 1, 1980, to January 1, 1983. One of the major features was to increase the monetary jurisdiction from \$1,000 to \$3,000. Since the Act was passed, a sub-committee, as provided for in the Legislation, has met on a regular basis to develop special rules to streamline the processes of filing and resolving relatively minor monetary disputes, hopefully, to develop a peoples' court. It is the intention to introduce a simple narrative of pleadings, alternatives to dispute resolutions and other structural settlement processes.

A number of courts throughout the Province will be designated as bilingual courts.

Small Claims Court Judges

Number of full-time Judges	9
Judicial District of Hamilton-Wentworth	1
Judicial District of Niagara North and South	1
Judicial District of Ottawa	1
Judicial District of York	6
	<u>9</u>

Courts and Office Accommodation Planning

W.M. Thomson,
Administrator

This branch provides general administration of all Court and office accommodation throughout the Province, as well as the liaison with the Ministry of Government Services in all alterations, new leases and capital projects required by the Courts.

Projects Completed

In Newmarket, a 14-courtroom Court House was completed on April 28, 1980. This Court House provides accommodation for Supreme Court,

The Ministry of the Attorney General

County Court, Provincial Courts (Family and Criminal Divisions) and Small Claims Court.

New facilities for the Provincial Court (Criminal Division), providing eight courtrooms for the Criminal Division and two courtrooms for the Small Claims Courts were completed in September, 1979, at College Park.

In Pembroke, two Courtrooms and support facilities were provided for Provincial Courts (Criminal Division and Family Division) in August, 1979.

The Oshawa Provincial Court (Family Division) was relocated in May, 1979, and provided with a two-courtroom facility. New facilities were provided for the Provincial Courts in Guelph when one Family courtroom and two Criminal Division courtrooms opened in July, 1979.

Also in July of 1979, a three-courtroom facility was opened in Burlington to accommodate the Provincial Courts (Criminal and Family Divisions) and the Small Claims Court.

A new computer room and related facilities were provided for the Public Trustee in November, and in December the offices of the Sheriff and Registrar in Kitchener were expanded.

Additional space was provided for the Head Office at 18 King Street East, Toronto.

The 3rd Small Claims Court was relocated in Richmond Hill and new facilities were provided for storage of goods seized by the Sheriff's office.

Arrangements were made to relocate the Provincial Courts (Family and Criminal Divisions) in more adequate quarters in the Metis Hall, Moosonee.

Additional space was provided for the Official Guardian at 180 Dundas Street West.

Renovations were completed on the first floor of the Peel County Court House in the area vacated by the Crown Attorney. Emergency lighting was installed in the Walkerton County Court House.

Accoustical problems in Courtrooms 31, 33 and 38 at Old City Hall, Toronto, were rectified.

Alterations to County Court House, Guelph, in the space vacated by the relocation of the Provincial Court (Family Division) were completed.

The Lindsay Provincial Courts (Family and Criminal Divisions) were relocated to more adequate facilities in the Kawartha Lakes Training School.

Twenty-three other small alteration projects, ranging from alterations to witness stands to partition relocations, were undertaken and completed.

Under Construction

Construction is underway in the Sudbury Court House to provide an additional Provincial Court (Criminal Division) courtroom, Court reporters office, J.P.'s office and Judge's office in the basement of the Court House.

In Milton, additional courtroom space is being provided in the area previously occupied by the Ministry of Agriculture and Food, and in Kitchener the first Small Claims Court is being re-organized to provide more efficient space for the County Court.

Two projects are underway at the York County Court House. One will relocate the Sheriff and Jurors offices and provide additional Judges offices and the other will provide a much needed expansion space for the Crown Attorney's Office on the ground floor.

A relocation of the computer room from the 15th to the 3rd floor at 18 King Street East is near completion.

More adequate facilities are being provided for the J.P.'s and renovations are being undertaken to Courtrooms A and K at Old City Hall.

In Brant County Court House, the 2nd-floor Council Chambers are being redesigned to provide a Jury courtroom, a Jury retiring room and washroom facilities. Renovations are being undertaken on the ground floor to provide adequate Judges Chambers and interview rooms.

A two-courtroom facility with holding area, Sheriff's Office, Judges Office, interview rooms and reporters office is being completed for the District Court in Timmins. The Provincial Court (Family Division) will relocate to a one-courtroom facility currently under construction at 3 Cross Street.

One additional courtroom and support facilities are being provided for the Provincial Court (Family Division) at 160 Silverhill Dr., Etobicoke.

A new two-courtroom facility is being provided for the Provincial Court (Family Division) in Sault Ste. Marie.

In Planning/Lease Search/Negotiation

Contract documents are being prepared for new facilities in Elliot Lake for the Provincial Courts (Family and Criminal Division) and Small Claims Court.

Lease negotiations are underway in Picton for an enlarged court facility at 332 Main Street for Provincial Courts (Family and Criminal Divisions).

Negotiations and working drawings are underway to provide adequate holding cells and interview areas for the Provincial Courts (Family and Criminal Divisions) in Napanee.

Tenders have been called for the North Bay District Court to provide additional Jury facilities, washrooms, witness room and barrister change rooms.

Tenders have also been called for renovations to the 2nd floor of the District Court House, Sudbury, to provide an additional jury courtroom, witness waiting area and interview rooms.

Tenders have been called for renovations to the Provincial Court (Criminal Division) at 1 Nicholas Street, Ottawa, which will consolidate the Ottawa Criminal Division Courts at this location. Tenders have been called to provide an additional jury deliberation room, new elevator and proper security in the Hamilton County Court.

Working drawings are in progress to provide two additional jury courtrooms and jury deliberation rooms, as well as converting an existing courtroom from non-jury to jury capabilities at York County Court House.

Design drawings are progressing for a Court House in St. Catharines to accommodate Supreme, County, Provincial Courts (Family and Criminal Division) and Small Claims Courts.

Initial planning is underway for a Court House in Ottawa to house Supreme, County, Provincial Courts (Family and Criminal Divisions) and Small Claims Courts, and for a Justice Complex in Metro Toronto.

Inquiry Management and Appointments Branch

P.W. Clendinneng,
Director

The Inquiry Management and Appointments Branch has two principal responsibilities:

1. co-ordinating and directing the logistical support of royal commissions, judicial inquiries and task forces funded through the Ministry of the Attorney General,

2. administration of the appointments program in relation to justices of the peace, notaries public and commissioners for taking affidavits.

In addition, the Branch administers The Public Institutions Inspection Act and The Blind Persons' Rights Act, and co-ordinates the drafting and processing of the Ministry's recommendations to council and regulations.

Early in 1980, justice of the peace services were reviewed concurrent with the introduction of The Provincial Offences Act. Additional appointments were made, and revised fee structures instituted.

The Professional Organizations Committee reviewed the provisions of The Notaries Act relating to the appointment of notaries and administration of this Act. The Committee's Report on notarial appointments was positive in nature and made no recommendations for change. Forms relating to the appointment of Notaries Public and Commissioners for Taking Affidavits were revised and updated, and revised fee structures instituted.

Revised guidelines for Royal Commissions and Inquiries were introduced in February, 1980, to further the objective of ensuring the efficient expenditure of public money. The appointment of a Chief Administrative Officer has increased the liaison between the Ministry and Royal Commissions, and the monitoring of the administrative and financial activities has been intensified.

The benefits to be derived from the employment of a Chief Administrative Officer for Royal Commissions will continue to substantially increase the liaison with Commissions and Inquiries and will continue to facilitate the development of a number of initiatives for improved financial/administrative management in relation to same. The coming year will also see the continuing review of the policies and procedures governing appointments.

The Ministry of the Attorney General

Provincial Courts (Criminal Division)

Chief Judge F.C. Hayes,
Associate Chief Judge H.A. Rice

Court Sitzings

During the past fiscal year, the Provincial Courts (Criminal Division) continued to hold sittings on a regular basis at approximately 140 locations throughout Ontario, with multiple courtroom establishments at approximately 25 locations. There was a minor fluctuation in activity in the Provincial Courts (Criminal Division) during this fiscal year, as well as a continuing change in the nature of the caseload, such as a greater number of substantial prosecutions arising from complex commercial transactions, more charges where a number of individuals are jointly charged with criminal and/or narcotic offences and an increasing number of prosecutions under miscellaneous federal and provincial statutes.

There have been continuing efforts throughout the Province to maximize the use of available judicial personnel and facilities. In this regard, a number of changes in court scheduling procedures have been made and, in addition, substantial emphasis is continuing to be placed on an early review of the nature of the case by both Crown and Defence Counsel. The various procedures in this regard are aimed at narrowing the issues before the court so as to more accurately estimate the amount of court time required for the trial or preliminary hearing.

Continuing efforts are being made by the Chief Judge's office to obtain a degree of uniformity in the time between the laying of the Information and the return date for the accused to appear.

The statistical analysis representing the caseload is only a partial assessment of the problem. Over the past few years, there has been a very discernible change in the nature of the caseload in that there are many lengthy criminal prosecutions, be they trials or preliminary hearings, and this has been reflected in the special assignment of Judges to various areas of the Province to deal with matters which could not be accommodated in the ordinary court list.

In Metropolitan Toronto, the number of courtroom days allocated to special criminal prosecutions (i.e., cases occupying one day or

more) increased from 815 in 1978-79 to 831 in 1979-80. Special matters being prosecuted by representatives of the federal Department of Justice accounted for 154 courtroom days, and special matters being prosecuted by Provincial Assistant Crown Attorneys accounted for 643 courtroom days in 1979-80. The movement of Judges from Metropolitan Toronto to other areas for special relief increased by some 53.8 per cent from 245 days in 1978-79 to 377 days in 1979-80. Included in the 1979-80 figure are additional sittings of the court on a regular basis in Brampton and Dundas, and the scheduling of these additional sittings commenced in the latter part of 1979.

The demand continued for the court to attend in remote communities in Northwestern and Northeastern Ontario, and this demand was met in most instances by scheduling special sittings. An increase over the past few years in the level of law enforcement has led to a greater number of charges and we have been unable to respond to all the demands for additional sittings in various areas of Northwestern Ontario.

Provincial Offences Act

The Provincial Offences Act and the companion amendments to the Provincial Courts Act were proclaimed as of March 31, 1980.

This legislation resulted in the establishment of the Provincial Offences Court. In an effort to improve the scheduling, the sittings of the Provincial Offences Court will be established on a four-tier system throughout the Province with the sittings being at 9 a.m., 10:30 a.m., 1:30 p.m. and 3 p.m. This results in a more intensive use of the physical facilities, and in the citizen who is charged and all necessary witnesses being required to attend at the court premises for not more than 1½ hours.

The provisions of the Provincial Offences Act provide to the defendant an opportunity of pleading guilty with an explanation in a plea of guilty courtroom. The sittings of the Provincial Offences Court for the purpose of accepting pleas of guilty with an explanation have been established at the various court locations throughout the Province on such a basis as to afford the defendant an opportunity to plead guilty with an explanation within a 15-day period.

The provisions of the Act requiring the defendant, if he wishes to plead not guilty, to indicate his

decision within 15 days will, no doubt, result in improved scheduling procedures and possibly a more efficient use of personnel and physical resources.

Court Visitations

The Chief Judge continued with his visits to a number of areas of the Province where he met with the Area Senior Judges and with the Provincial Judges. The Area Senior Judges also held their regional meetings, and the Chief Judge attended these meetings wherever possible.

In all meetings there has been a continuing study of the local criminal and provincial statutory

offence caseload and various alterations have been made to case-scheduling methods in order to achieve an earlier disposition date and a more efficient use of judicial personnel, administrative personnel and physical facilities.

Bilingual Court Services

On the proclamation of Bill C-42, arrangements have been completed to provide a trial before a French-speaking or a bilingual Judge when so requested throughout the Province of Ontario. This is an expansion of the bilingual service which was being provided in certain areas of the Province where trials were proceeding before a French-speaking or bilingual Judge on a consent basis.

Judicial Appointments

	<u>1975</u>	<u>As of Mar. 31 1976</u>	<u>As of Mar. 31 1977</u>	<u>As of Mar. 31 1978</u>	<u>As of Mar. 31 1979</u>	<u>As of Mar. 31 1980</u>
Provincial Judges in Ontario						
Number of Full-time Judges, including Chief Judge, as of December 31	117	117	128	129	137	141
Number of Judges Retired or Deceased or on L.T.I.P.	6	6	5	8	5	9
Number of Judges Appointed	5	7	15	8	12	12
Number of Part-time Judges	2	2	2	2	1	1
Number of Judges on Extension	6	6	4	6	5	10

As of March, 1980, eleven (11) of the above Judges were also presiding in the Family Division.

	<u>1975</u>	<u>As of Mar. 31 1976</u>	<u>As of Mar. 31 1977</u>	<u>As of Mar. 31 1978</u>	<u>As of Mar. 31 1979</u>	<u>As of Mar. 31 1980</u>
Provincial Judges in Metropolitan Toronto						
Number of Full-time Judges, including Chief Judge, as of December 31	29	28	36	34	40	48
Number of Judges Retired, Deceased or Resigned	0	1	0	2	1	2
Number of Judges Appointed	1	1	8	0	7	10
Number of Judges on Extension	1	2	1	2	2	3

The above shows only Metropolitan Toronto. To calculate figures for the Judicial District of York, it will be necessary to add one full-time Judge — Judge R.G. Pearse in each instance, and to show one resignation — Judge C.W. Morrison in 1975.

The Ministry of the Attorney General

Adjournments in the Provincial Courts (Criminal Division)

The practice direction by the Honourable W.G.C. Howland, Chief Justice of Ontario, with respect to adjournments in the Provincial Courts has been of very substantial assistance in facilitating the setting of trial dates and has resulted in fewer trials not proceeding on the appointed day.

Judicial Education

The office of the Chief Judge continued to review judgments of the Court of Appeal and law reports and to circulate matters of interest to the Judges. The Law Clerk assigned to the staff of this office continued to prepare appropriate annotations for recently reported judgments and to carry out research in areas of criminal law relevant to the Provincial Courts (Criminal Division), including rendering assistance to Judges in their preparation of judgments.

The Judges Education Program was held at the University of Western Ontario again this year. This program permits a Judge, once every three years,

to live for one week in a university setting and to participate in a program consisting of lectures, discussions, and videotapes.

The Provincial Judges Association (Criminal Division) continued with its education program composed of regional education and sentencing seminars. At these seminars, emphasis was placed upon the introduction of the Provincial Offences Act and the companion amendments to the Provincial Courts Act.

Justices of the Peace Education Program

During the months of January, February and March, three-day regional seminars were held with respect to the introduction of the Provincial Offences Act.

These seminars were attended basically by "A" Direction Justices of the Peace, and there were five seminars in all — two in Toronto and one each in Ottawa, Sault Ste. Marie, and London. At these seminars, the Justices of the Peace were provided with an instructional manual and an annotated copy of the Provincial Offences Act.

Statistics

The statistical reports indicate the following changes within the system:

	<u>1978-79</u>	<u>1979-80</u>	<u>Percentage Increase/ (Decrease)</u>
New Charges — All Statutes			
Metropolitan Toronto	2,124,788	2,019,131	(4.97%)
Remainder of Province	1,795,462	1,895,042	5.54%
Total	<u>3,920,250</u>	<u>3,914,173</u>	<u>(.15%)</u>
Dispositions — All Statutes			
Metropolitan Toronto	1,882,406	1,919,059	1.94%
Remainder of Province	1,814,264	1,912,912	5.43%
Total	<u>3,696,670</u>	<u>3,831,971</u>	<u>3.66%</u>
Dispositions — C.C.C.			
Metropolitan Toronto	100,404	113,249	12.79%
Remainder of Province	218,359	230,871	5.73%
Total	<u>318,763</u>	<u>344,120</u>	<u>7.95%</u>
Dispositions — Minor Traffic			
Metropolitan Toronto	1,689,533	1,766,448	4.55%

Also, Judges across the Province were requested to meet with the "B", "C", and "D" Direction Justices of the Peace in their area in order to explain to them the provisions of the Act, and these Justices of the Peace were also provided with educational material.

General Comments

Substantial emphasis is and will continue to be placed on encouraging pre-trial disclosure in criminal matters.

In addition to these efforts, we are continuing to have a Provincial Judge, or a limited group of Provincial Judges, assigned to a particular section of the caseload on a continuing basis until that portion of the caseload has been finalized. This type of assignment and scheduling arrangement has been in operation at the additional court facilities at College Park in Toronto since September of 1979, and it would appear that it is assisting in achieving an earlier disposition date for the matters coming before the court.

New accommodation for the courts has been provided in Guelph, Burlington, College Park and Lindsay, and this has facilitated the operation of the courts in those areas.

Provincial Courts (Family Division)

Chief Judge H.T.G. Andrews,
Associate Chief Judge Robert J.K. Walmsley

Jurisdiction

The jurisdiction of the Provincial Courts (Family Division) has been expanded during the fiscal year 1979-1980. At present, the Courts' authority includes the following matters:

1. Prosecutions under the federal Juvenile Delinquents Act in respect of the criminal conduct of infant offenders (juvenile delinquency) and criminal conduct against infant victims (contributing to delinquency).
2. Child protection under The Child Welfare Act of 1978. This Act came into force on June 15, 1979, and while it was substantially similar to the previous protection legislation, there have been some innovations (the effect of which is not yet entirely apparent), such as legal representation for children and stricter obligations upon the

public and professionals to report suspected instances of neglect or abuse.

3. Adoption under The Child Welfare Act of 1978. This is an area of family law jurisdiction that has been returned to the Provincial Courts (Family Division) after an absence of more than 25 years. Now the jurisdiction of the Provincial Courts (Family Division) is exclusive. Literal interpretation of certain provisions by the judiciary prompted a moderate amendment to the Act in December 1979, largely to get around a problem in the eyes of Children's Aid Societies of locating, serving with legal process and securing adoption consents from fathers of children born out of wedlock.

4. Inter-spousal rights and obligations under The Family Law Reform Act of 1978 and The Reciprocal Enforcement of Maintenance Orders Act. The fiscal year 1979-80 has been the second full year in which the reform legislation has been in effect, and a considerable body of reported jurisprudence is now available for the guidance of litigants, lawyers and Judges. It is now clear that the transition from the old legal regime to the new has been effected very smoothly.

5. Parent-child rights and obligations under The Family Law Reform Act of 1978, The Children's Law Reform Act of 1977 and The Reciprocal Enforcement of Maintenance Orders Act. Matters dealing with custody, access, findings of paternity, child support and freedom from molestation are also in their second year under the reformed legal regime. Again, no significant concerns over the transitional period have materialised.

Provincial Judges have also had the authority to try many offences under the federal Criminal Code and under provincial regulatory laws. Many intra-familial crimes (such as domestic assaults and incest) are heard by Judges who normally preside over a Provincial Court (Family Division) but who, because of the criminal or regulatory nature of the proceedings, must reconstitute their Court as the local Provincial Court (Criminal Division).

New rules of practice and procedure came into effect on June 15, 1979, applicable to all civil proceedings before the Provincial Courts (Family Division), replacing the rules that were previously restricted only to The Family Law Reform Act.

The Ministry of the Attorney General

Judicial Complement

As of March 31, 1980, judicial complement for the Family Division comprised:

Judges serving the Family Division	
— full time	50
— part time	5
Judges serving both Criminal and Family Divisions	11
Judges on leave	<u>2</u>
Total complement	<u>68</u>

Two fewer than the previous year at this date.

Complement for the Unified Family Court was increased by one, bringing their total to 4.

Education

As in the former year, heavy emphasis continued to be placed upon training and development. There was an increased demand imposed upon the judiciary and court staff to respond to numerous requests for their assistance in providing information and instruction to individuals and groups with respect to current legislation.

Programs for the Judiciary were held in:

Ottawa — September 13-15, 1979

Toronto — April 2-5, 1979

Toronto — October 21-26, 1979

Toronto — November 11-16, 1979

The Canadian Association of Provincial Court Judges sponsored a program for newly appointed Judges in Ottawa, from November 2 to 4, 1979. The Chief Judge and his law clerk, R.N. Komar, acted as instructors. Family Division Judges, the Chief Judges and members of their staff have lectured extensively at universities and other educational institutions as well as social service agencies and service clubs.

Student training continued through programs such as the Youth Secretariat's Experience '79. The Chief Judge's office disbursed 1,610 applications to the 35 participating courts. Fifty-seven students were from faculties of law and 21 from other disciplines.

A new resource manual on the Child Welfare Act (June, 1979) was written for Judges, Administrators, and senior staff members of the court.

The Chief Judge's Office played host to visitors from Australia, England, Saskatchewan and

Manitoba wishing to examine Ontario's Family Court system.

Service Delivery

The 54 court offices continued to provide administrative services to the 112 locations at which courts are held. Court appointed Justices of the Peace increased by 11 and the number of court staff authorized to perform marriages rose by five.

New accommodation was provided for Courts at Pembroke, Oshawa and Guelph.

Concerns arose this year regarding the sharp increase in requests for the setting aside of one-, two- and three-day periods for 'special trials' on Family Law Reform Act custody matters and Child Welfare Act wardship hearings. A study on the extent of this problem was undertaken by the Chief Judge's office and a report produced in April. Altogether, 1,105 days had been consumed over a six-month period.

The Family Court's seven Senior Judges continued to work with their regional courts in maintaining optimum service delivery. They met with the Chief Judges on four occasions.

Ongoing aids such as the Maintenance Assessment Form, the Directory of the Provincial Court (Family Division), and Statute Binder Inserts for staff and other professionals continued to be produced.

Systems for a continual monitoring of time lapses between the application/information stage and first appearance; and between first appearance and the adjournment stage were developed. This has enabled the Chief Judges to maintain an overview of scheduling throughout the Province.

The following Family Courts are all providing bilingual services:

Ottawa	Sturgeon Falls
Sudbury	North Bay
Hornepayne	Mattawa
Elliot Lake	Blind River
Bruce Mines	
Cochrane	
Hearst	
Kapuskasing	
Smooth Rock Falls	
L'Orignal	
Rockland	
Cornwall	

PROGRAMS AND ADMINISTRATION DIVISION

G.H. Carter,
General Manager

Function

This section of the Ministry is responsible for directing and co-ordinating the Ministry's general support services including personnel, financial management, auditing and administrative procedures. In 1979/80 emphasis was again placed on increasing the efficiency of available resources in compliance with the Ontario Government's continued constraint measures.

Women's Advisory Office

V. Drawbell,
Program Assistant

During the fiscal year 1979-80 the program was maintained by Mrs. V. Drawbell, Program Assistant. Mrs. M.C. McLean, Women's Advisor, was absent on maternity leave, and subsequently transferred to the Planning and Evaluation Branch.

The aim of the Affirmative Action Program in the Ontario Public Service is 'to raise and diversify the occupational distribution of women'.

During the fiscal year 1979-80, the staff of the Women's Advisory Office directed their efforts towards implementing this goal through the organization of seminars, awareness sessions, career counselling, and the dissemination of related information through the network of approximately 130 Affirmative Action Representatives in the ministry's regional and Metro offices. Continuing support was received from senior management who assisted in the planning of the program.

Notwithstanding the effects of financial constraints, the commitments outlined in the Management by Results plan for the Women's Advisory Office were largely met. It is the continued wish of the Attorney General and the Deputy Attorney General that the Affirmative Action Program meets its aims to the mutual benefit of female employees and the Ministry.

Finance and Services Branch

H.A. Gibbs,
Director

During the fiscal year 1979/80, the Branch, in its role of providing financial and administrative support to the Ministry, was able to introduce several initiatives representing significant cost and administrative improvements.

In the Forms and Records field, the substantial completion of the Ministry's forms standardization project made it possible to undertake single, annual, consolidated printings of many forms hitherto separately ordered by individual offices as need arose. Significant savings in printing costs were thereby realised in the Courts Administration program of the Ministry, plus reductions in the administrative effort required to order and stock supplies of forms.

A major undertaking was a Ministry-wide evaluation of photocopying needs, a growing cost item in the Ministry's annual budget. As a result of the evaluation, suppliers were invited to tender, and a combination of machines was selected which would most economically and effectively meet these needs. These machines are now in place, and their utilization is being monitored to determine how well they are meeting Ministry requirements.

The project to replace the present in-house mini-computer was well advanced at year end, and will be completed during the summer of 1980. The old machine has been in use for five years but is no longer capable of meeting the needs of the Ministry and the central agencies; the replacement machine represents more resources at less overall cost, and will substantially improve the Ministry's data processing capability.

Studies were completed which favoured centralisation of a major segment of Ministry banking operations. Details need to be worked out with Treasury officials in the light of services available from the banking community. However, the will exists to bring about an early and a substantial degree of centralisation in banking arrangements in order to effect savings in money costs.

Representatives from the Branch formed part of the Ministry implementation team for project "Access", an important initiative of the

The Ministry of the Attorney General

Government of Ontario. This involved participation in training seminars for Ministry staff throughout the Province, and a liaison role with suppliers and central agency staffs. Project "Access" is in operation throughout all offices of the Ministry and this involvement is now complete.

Audit Services Branch

J. Solymos,
Director

Mr. J. Solymos was appointed director effective January 2, 1980, filling the vacancy created by the retirement of Mr. G.L. Wilcox.

Audits

Special assignments and investigations continue to place a heavy demand on the manpower of the Branch.

The Branch continued to provide audit and accounting assistance to significant projects in addition to regular audit requirements of Court and Judicial Offices, Branches, Boards and Commissions, although the schedule was curtailed due to complement vacancies for four auditors. Greater emphasis was placed on operational auditing which will continue to be a major part of the Branch's program.

Defaulted Fines/Licence Suspension System

Suspension and reinstatement orders processed during the year ended March 31, 1980, amounted to 203,888, an increase of 15.8 per cent over previous year's volume of 176,092. The value of outstanding fines collected through the licence suspension scheme has increased during the year ended March 31, 1980, by 21.2 per cent to \$3,317,624 from \$2,737,781 over the previous year. The higher workload was absorbed by this operation without staff increase as a result of continuing efforts to increase efficiency.

Personnel Management Branch

O.M. Mitchell,
Director

The Branch continued its responsibility to assist Managers in program operation, particularly through the best utilization of human resources.

The Ministry still felt the effects of fiscal and staffing restraints, and special initiatives from the Civil Service Commission regarding policies relating to employment of surplus staff, the handicapped and credentialism. The Branch disseminated information on these controls and guidelines and increased its assistance and advice to Managers on the staffing function and the best use of resources available. Provincially sponsored work programs such as O.C.A.P., Experience '79, and Work Experience weeks were supported by the Ministry and benefit was derived from them.

In organization and position administration, review and updating of positions was ongoing and work concentrated on the identifying and conversion of management positions to the Management Compensation Plan. Information on positions not meeting criteria for exclusion from the bargaining unit was submitted to the Civil Service Commission for their further action on change of position status to bargaining unit. Ministry re-organization and legislative change increased regular activity and included the extension of the Provincial Court (Criminal Division) in College Park, a re-organization of Supreme Court offices in Toronto and the institution of the Child Representation Program in the office of the Official Guardian.

The Branch continued its responsibility to staff development. The Ministry's Management Development Program, presented in co-operation with Sheridan College, provides the opportunity for progressive management training. Civil Service Commission sponsored courses and educational assistance also provided assistance for career development and enrichment. The Branch co-ordinated training seminars to promote the Access Project. Pre-Retirement Programs were continued during 1979/80 on a shared cost basis with other Ministries in the Justice Policy Field. Eleven Ministry employees attended seminars held in Toronto. Spouses were also invited, and evaluations of the program received indicate extremely favourable reaction. The program will be continued into the next fiscal year.

Changes in Collective Agreements led to interpretative questions and Branch staff assisted Managers resolve complaints wherever possible with effective staff relations guidance.

Planning and Evaluation Branch

D. Mueller,
Director

The continuing responsibility of the Planning and Evaluation Branch is to provide advice and assistance to Ministry program managers in the development and implementation of performance measurement systems. Through improved planning and management process, optimum resources utilization and effective service delivery is ensured.

Management By Results

The most significant achievement in 1979-80 was development and/or improvement of the results-oriented management system in most key operations of the Ministry. This system, as before, combines two separate data flows, one on workload and the other on resource levels. Its twofold purpose is to provide for the assessment of actual operating results in relation to current budgets and to facilitate the development and substantiation of future budgets in terms of resources required for planned operational levels. Coverage by this reporting system represented about 91 per cent of total Ministry's resources.

In addition to regular planning activities, plans of both single and multi-year terms were developed to outline future financial and service level implications of continuing and new operations. The Branch continues to maintain a close link with the Ontario Legal Aid Plan, Metropolitan Toronto Forensic Service, and the Ontario Federation of Indian Friendship Centres in terms of budget planning and analysis of operating statistics. Other work related to the administration of federal-provincial cost-sharing agreements affecting Legal Aid, Native Peoples, Unified Family Court and Criminal Injuries Compensation.

Information and Computer Systems Branch

D.H.S. Thornton,
Director

The Branch provides services to the Ministry in two separate areas of responsibility. One of the Branch's responsibilities is the collection, dissemination and analysis of operational, statistical and management information. At the present time the majority of the information

collected relates to the operations of the courts at all levels and to the Crown Attorney's offices.

Monthly, quarterly and annual statistical reports are prepared on a regular basis for senior officials of the Ministry, Division and Branch Heads and the Judiciary. In addition, a wide variety of special reports are prepared, upon request.

The Branch is continuing its efforts to improve its data collection and dissemination services. To this end, a new statistical reporting system for the Provincial Court (Family Division) was implemented, along with a new Provincial Offences Act reporting system. An automated management information retrieval system is now being developed.

This Branch also provides support to the various Branches and Divisions of the Ministry in the Development and improvement of manual and computerized systems and in the field of management consulting.

The Branch undertook a wide variety of consulting and development projects in the last year. Of particular note was the successful mini-computer system implemented in the Provincial Court (Criminal Division) in Oshawa. Plans are now under way to expand this system to seven additional sites across Ontario. Another major undertaking was the revision of manual and computer systems to facilitate the implementation of the Provincial Offences Act.

Accountant, Supreme Court of Ontario

E.J. McGann,
Accountant

Duties

This office is the depositary for all money, mortgages and securities which are paid into, or lodged with, the Supreme Court of Ontario. These monies, mortgages and securities are received, and disbursed or released pursuant to judgments and orders of the Supreme Court of Ontario, and in accordance with the Judicature Act and other relevant statutes.

Assets

Assets under management at the end of the fiscal year 1980 totaled \$153 million from \$157 million the previous year. On October 1, 1979,

The Ministry of the Attorney General

the interest rate paid on infants' funds was raised to 11 per cent per annum from nine per cent and the rate paid on other funds being held pending court cases was raised to seven per cent per annum from six per cent. Both rates are compounded semi-annually and calculated on a minimum monthly basis.

Revenues and Investments

The interest revenue on the portfolio increased to \$13.9 million from \$13.1 million in the fiscal year 1978-79. The monies paid into the Supreme Court for suits and matters in the current fiscal year totalled \$64.2 million (1978/9 – \$64.2 million), while disbursements for the same period amounted to \$66.1 million (1978/9 – \$58.9 million).

Boards and Commissions

Ontario Law Reform Commission

Chairman:

Derek Mendes da Costa, Q.C., LL.B., LL.M.,
S.J.D., LL.D. (Lond.) 1980.

Vice Chairman:

Honourable George A. Gale, C.C., Q.C., LL.D.

Members:

Honourable Richard A. Bell, P.C., Q.C.

Honourable James C. McRuer, O.C., LL.D., D.C.L.

William R. Poole, Q.C.

Barry A. Percival, Q.C.

Function

In 1964, pursuant to The Ontario Law Reform Commission Act, S.O. 1964, c. 78, the Ontario Law Reform Commission was established as an independent Commission. The function of the Commission is to inquire into and consider any matter relating to:

1. reform of the law having regard to the statute law, the common law and judicial decisions;
2. the administration of justice;
3. judicial and quasi-judicial procedures under any Act; or
4. any subject referred to it by the Attorney General.

In the course of its study of a broad range of topics within the legislative competence of the Province of Ontario, the Commission has published 54 Reports and 13 Annual Reports, the latter briefly describing the Commission's activities during each fiscal year. The 54 Reports contain recommendations for law reform in a substantial number of areas; major contributions have been made in respect of such matters as family law, the age of majority, landlord and tenant law, limitation periods, powers of attorney, occupiers' liability, sale of goods and products liability. More than 17 Commission Reports have formed the basis for such statutes as The Family Law Reform Act, S.O. 1978, c. 2, The Succession Law Reform Act, S.O. 1977, c. 40, The Children's Law Reform Act, S.O. 1977, c. 41, The Marriage Act, S.O. 1977, c. 42, The Age of Majority and Accountability Act, S.O. 1971, c. 98, The Landlord and Tenant Amendment Act, S.O. 1968-69, c. 58, The Landlord and Tenant Amendment Act, S.O. 1972, c. 123, and The

Powers of Attorney Act, S.O. 1979, c. 107. In addition, the new Occupiers' Liability Act, S.O. 1980, c. 14, when proclaimed, will substantially reflect the Draft Act proposed by the Commission in its 1972 Report on Occupiers' Liability.

Activities During 1979-80

In 1979, the Commission published its Report on Products Liability. The need to review this critical area of the law became clear in the course of the Commission's detailed examination of the law concerning the sale of goods. The Report focuses on persons who supply defective products and is concerned essentially with the nature and scope of the civil liability of such persons to a purchaser, ultimate user or other person for injuries caused by these products. The Report examines recent developments in other Canadian jurisdictions, the United States, England and Western Europe. In addition to its 33 recommendations for reform, it provides a Draft Bill in respect of the liability for the supply of defective products. The Report considers several possible alternatives for reform and examines the economic and insurance aspects of strict liability, the scope of strict liability and conflict of laws issues.

In addition to completing its Report on Products Liability, the Commission has more than 10 projects on its present program. One of the most complicated projects concerns an investigation of the desirability of expanding and developing the law of class actions beyond the confines of Rule 75 of the Supreme Court of Ontario Rules of Practice, the existing procedural rule that governs the initiation of class actions in Ontario. Work on the Class Actions Project has continued during the past year; a considerable portion of the research has been completed and many decisions have been taken by the Commission. Further, a substantial amount of work has been completed on the law of trusts and the enforcement of judgment debts and related matters. It is anticipated that the Commission will report on several aspects of these areas of the law in the 1980-81 fiscal year. Work also continues on the following projects: the Administration of Estates of Deceased Persons, the Law of Standing, the Law of Mortgages, Basic Principles of Land Law and Powers of Entry. Two new projects were added to the Commission program during the past year: namely, the Law of Contract Amendment

Boards and Commissions

Project and Contribution Among Wrongdoers Project. Another project, concerning Declarations of Marital Status, has been deferred as a result of demands that have been made upon Commission resources; however, work will resume on the project as soon as possible. Finally, the Commission has recently received a reference from the Attorney General concerning witnesses before legislative committees.

In its research and deliberations, the Commission has been ably assisted by many members of the bar and of the public. In addition, the Commission has profited from liaison with other law reform agencies and with the Uniform Law Conference of Canada.

Ontario Municipal Board

The offices of the Board are located at 180 Dundas Street West, Toronto.

All Members of the Board are appointed on a full-time basis* and the following is a list of the Members during 1979:

Chairman:
H.E. Stewart

Chairman Emeritus:
W. Shub, Q.C.

Vice-Chairmen:
A.H. Arrell, Q.C.
A.L. McCrae
W.T. Shrives
W.H.J. Thompson, Q.C.
B.E. Smith
D.S. Colbourne
D.D. Diplock, Q.C.

Members:
S.S. Speigel
H.H. Lancaster
P.M. Brooks
A.B. Ball
C.G. Ebers, Q.C.
H.W. Kelly, Q.C.
J.A. Wheler
E.A. Seaborn
A.J.L. Chapman, Q.C.
W.E. Dyer, Q.C.
C.G. Charron, Q.C.
J. Wadds
K.D. Bindhardt
W.L. Blair
D.H. McRobb

P.G. Wilkes
J.E. Hendy
V.M. Singer, Q.C.
M.D. Henderson
F.G. Blake*
(part-time, former Vice-Chairman)

Chief Administrative Officer and Secretary to the Board:
K.C. Andrews

Establishment and Jurisdiction

The Board was created in 1932 under The Ontario Municipal Board Act which repealed but incorporated many of the provisions of The Railway and Municipal Board Act (passed in 1906), The Municipal Schools Accounts Audit Act and The Bureau of Municipal Affairs Act. The establishment of the Board and its authority is now derived from The Ontario Municipal Board Act, R.S.O. 1970, Chapter 323, as amended. Much of its jurisdiction and authority flows from The Municipal Act, The Planning Act, The Highway Improvement Act, The Assessment Act, as well as numerous other statutes.

Functions

The Board acts as an independent administrative tribunal and is not an agency or commission. Its function and duties are prescribed by these Acts. When the Board holds a hearing, it is, of course, governed by any applicable statute; but it is also subject to the rules of natural justice. The administration of justice could be said to be divided between the judicial arm of government (the Courts) and the executive arm, of which latter this Board is a branch. The Courts operate under strict rules and interpret and follow statutes and precedent. Administrative boards, such as this Board, administer what is sometimes called discretionary justice, having a minimum of rules and a wide spectrum of discretion.

The extent and nature of the jurisdiction of the Board could be described as responsibility for the sound growth and development of municipalities within the framework of the statutes and protection of private interests as much as possible in the following areas:

1. Planning

Approval of restricted area by-laws, references of Official Plans and plans of subdivision, and

appeals from land division committees and committees of adjustment.

2. Municipal Capital Expenditures

Financial supervisory role by approval of capital undertakings and the manner of recovery.

3. Municipal Structure

Constitution, alteration of boundaries and dissolution of municipalities.

4. Assessment Appeals

5. Miscellaneous Applications

Applications and Appeals to the Board under The Planning Act

The following table shows the number and types received in 1979 and the previous four years:

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
Applications for approval of restricted area by-laws	2438	3202	3417	3569	3995
Applications for approval of plans of redevelopment	0	0	1	24	18
Applications for approval of proposed plans of subdivision and condominium	20	47	62	34	71
Applications for approval of official plan amendments	97	157	229	213	180
Appeals for amendment of restricted area by-laws	98	120	109	112	146
Appeals from Committees of Adjustment and Land Division Committees	<u>1780</u>	<u>2205</u>	<u>1793</u>	<u>1833</u>	<u>1704</u>
	4433	5731	5611	5785	6114

Approval of Capital Undertakings and the Imposition of Rates and Levies to Recover the Cost thereof

In 1979 the Board prepared a revised edition of a booklet on "The Role of the Ontario Municipal Board with respect to undertakings involving long term commitments by Ontario Municipalities and their Local Boards". This booklet was mailed to all Commissioners of Finance and the Treasurers of all regions, counties, and local municipalities in the Province to provide a better understanding of the Board's role and for assistance in providing the financial information required by the Board in this connection.

In order to avoid delay and to expedite the processing of applications for approval of capital expenditures, the Board establishes early in each year:

1. a capital expenditure quota for all regional municipalities and cities and the larger towns and townships that normally submit applications frequently in one year, and
2. a permissible debt limit for all other municipalities.

The following table shows the number of applications received by the Board in 1979 and the previous four years.

<u>Year</u>	<u>Applications</u>
1975	3218
1976	3056
1977	2608
1978	2536
1979	2364

Assessment Appeals and Miscellaneous Applications

In addition to the number of capital expenditure applications and applications under The Planning Act, the Board received the following appeals and applications in 1979 under the various statutes specified:

The Assessment Act	259
The Conservation Authorities Act	38
The Local Improvement Act	8
The Municipal Act	68
The Municipal Affairs Act	10
The Ontario Municipal Board Act	2
The Pits and Quarries Control Act	8
The Public Transportation and Highway Improvement Act	7
The Education Act	8
Special Legislation (Municipalities)	32
Other	19
	<u>459</u>

Boards and Commissions

Summary of Applications and Appeals

The following is a summary of applications and appeals to the Board for the years 1975 to 1979:

	1975	1976	1977	1978	1979
Restricted Area By-laws, Official Plan Amendments, etc.	2635	3526	3818	3952	4410
Committee of Adjustment and Land Division Appeals	1780	2205	1793	1833	1704
Capital Expenditure Applications	3218	3056	2608	2536	2364
Assessment Appeals and Miscellaneous	294	356	367	359	459
	7927	9143	8586	8680	8937

Board Hearings

Years	No. of Hearings	No. of applications dealt with at hearings
1974	1724	2142
1975	2410	2941
1976	1877	2325
1977	1996	2492
1978	2351	2959
1979	2366	3286

Applications which do not require hearing are subject to review, consideration and decision by the Board. In 1979, the Board disposed of 10,196 matters which involved the preparation and issue of 8,658 Board Orders.

Board Decisions

Decisions of the Board of leading cases may be found in the Ontario Municipal Board Reports (O.M.B.R.) published by Canada Law Book Limited under arrangement made with the Board and the Ministry of the Attorney General. Copies of decisions are also distributed by the Board to appropriate Government agencies and to various universities and law libraries for reference purposes. Copies of individual decisions may be obtained on request from the offices of the Board.

Appeals from Board Decisions

1. Divisional Court on matters of law and jurisdiction.
2. Petition to Lieutenant Governor in Council.
3. Application to Board for rehearing.

Annual Report

The 74th Annual Report of the Board for the year 1979 is available from the Government of Ontario Bookstore.

Assessment Review Court

Chairman:
B.H.B. Bowlby, Q.C.

Vice-Chairman:
G.C. Hewson

Vice Chairman part-time:
S.R.R. McNeil

Members part-time: 80

Jurisdiction

The Assessment Review Court was established under The Assessment Act, 1968-69 and continues under The Assessment Review Court Act, 1972. This Court is an administrative tribunal which draws its jurisdiction from The Assessment Act and The Municipal Act.

The responsibility of the Court is to hear and determine

1. Complaints against real property assessment for the basis of municipal taxation in Ontario at the lowest cost to the taxpayer.
2. Appeals from the refusal of municipal clerks to amend the list showing school support for school board taxation.
3. The apportionment of municipal taxes or rates applicable to individual parcels where land has been assessed in block.
4. When authorized by municipal by-law (or by way of an appeal from the decision of a municipal council) applications for cancellation, reduction or refund of municipal taxes; and, when authorized by a municipal council (or by way of an appeal from the decision of a municipal council), applications for an increase in municipal taxes where gross or manifest errors have been made in the collectors' roll.

Administrative Functions

The Regional Registrars of the Court are responsible for the processing and scheduling for hearing of complaints against assessments and the certification of the last revised assessment roll of each municipality in Ontario. The Regional Registrar also schedules all appeals from the

decisions of the Court to the County or District Court Judges within the Province under Section 55 of The Assessment Act.

Summary of Activities

The following is a brief report of the activities of the Court during the period April 1, 1979, to March 31, 1980.

1. Court Sittings

During the year the Court sat for 2,238 days in various municipalities throughout the Province and heard and determined 118,744 complaints, appeals and applications.

The Regional Registrars processed and scheduled complaints against assessment under Sections 44 and 52, processed and scheduled appeals to the County or District Judge under Section 55 of The Assessment Act, and applications and appeals under Section 636a of The Municipal Act.

During this period as in 1978-79, the Assessment Review Court experienced an increase over former years in complaints relating to all types of properties and in particular complaints relating to large industrial complexes and income producing properties such as apartment houses, office towers, shopping centres and major hotels, all involving considerable amounts of assessment and municipal tax monies. Because of their complex nature, one such complaint can take up to two weeks to be heard which has seriously affected the Court's productivity and the disposition of complaints.

No municipalities were proclaimed at market value for assessment purposes during this period. However, 13 municipalities were re-assessed under the provisions of Section 86 of The Assessment Act, resulting in a considerable increase in the number of complaints in these municipalities. Some 95 municipalities were re-assessed under Section 86 in 1979 for taxation in 1980, resulting in a substantial increase in the number of complaints from these municipalities filed in this period.

2. Training and Development of Court Members and Staff

During this period, groups of Court members attended instructional seminars in Gananoque, Sudbury, London and Toronto.

Regional Registrars and Assistant Regional Registrars attended instructional seminars in Huntsville, Orillia and Toronto.

Clerks of the Court attended instructional seminars in Toronto, Hamilton, Newmarket and London.

3. Administrative Matters

During this period, the Court continued to review its practice and procedures and implemented changes where necessary in order to improve its efficiency in processing and disposing of complaints. A summary of Assessment Review Court complaints and appeals is set out at the end of this report.

The purpose of the Assessment Review Court is to hear and determine complaints relating to assessments throughout the Province as soon as may be practicable. With the increase in volume and complexity of complaints, the main difficulty in completing the hearings arises in scheduling and disposing of the complaints as soon as practicable so that the assessment rolls can be certified.

Program of Operations for the fiscal year 1980-81

1. The principal objective of The Assessment Review Court in the next fiscal year and in succeeding years will be to continue to improve the procedures for scheduling and hearing complaints to enable the assessment rolls to be certified as soon as possible, especially as the amount of realty and business assessments under complaint now exceeds \$4 billion per annum.
2. The Assessment Review Court is implementing a new court scheduling and disposition system designed to improve the complaint handling process. This system will have visual display terminals located in each of the Regional offices. Complaint information will be keyed and verified through these terminals. In addition, an online inquiry function will be supported. Information about the property in question will be extracted from an assessment file and maintained on a complaint master file. Various management reports and statistics, together with notices of hearings, decisions and court records will be produced. A court scheduling system will be provided with the ability to handle early appearances, appeals and adjournments. Finally, a history sub-system will be included to reduce the costs of operation and to maintain records of completed cases. It is expected that this system will be operational in October, 1980.

A policy submission on the Revision of Assessment Review and Appeal Procedures has

Boards and Commissions

been submitted to the Cabinet and is now the subject of review by the Justice Policy Committee of the Cabinet.

The main purposes of this submission are as follows:

- 1. To eliminate multiple “trials de novo” procedures at each level of assessment review and appeal. (Assessment Review Court, County Judge, persona designata, and the Ontario Municipal Board.)
- 2. To relieve County and District Court Judges from hearing quantum appeals in assessment matters and substituting from this level of assessment appeals procedure an appropriate administrative tribunal which would provide a final decision.
- 3. To designate the Divisional Court of the High Court of Justice as the Court to adjudicate on matters of law and procedure arising from the application of The Assessment Act.

Summary of Assessment Review Court Complaints and Appeals

	1977-78	1978-79	1979-80
Section 52 of The Assessment Act (I)	81,998	86,211	117,132
Section 42, 43 of The Assessment Act (II)	8,013	7,676	6,620
Sections 516, 547, 636a, 636b of The Municipal Act (III)	37,388	42,050	31,099
TOTAL	127,399	135,937	154,851

- Footnotes:
- (I) This section deals with complaints against annual assessment made under Section 40 of the Act.
 - (II) This section deals with complaints against additional assessment made under Sections 42 and 43 of the Act.
 - (III) These sections deal with applications and appeals relating to:
 - (a) School support
 - (b) Apportionment of municipal taxes
 - (c) Cancellation, reduction or refund of municipal taxes
 - (d) Increase in municipal taxes by reason of clerical errors.

Summary of Appeals to County and District Court Judges (Section 55 of the Assessment Act)

1977-78	1978-79	1979-80
10,245	14,547	13,951

Criminal Injuries Compensation Board

Chairman:

Allan Grossman

Vice-chairman (part-time):

Mrs. Anne Stanfield

Vice-chairman (part-time):

Mrs. Audrey Merrett

Members (part-time):

Douglas H. Lissaman, Q.C.

Robert W. Mitchell, Q.C.

Harvey Spiegel, Q.C.

Nathan L. Sandler

Uno Viegandt

Ms. E. Lee Monaco

The Board administers The Compensation for Victims of Crime Act, 1971, which succeeded The Law Enforcement Compensation Act, 1967. Section 3 of the statute which, in part, limited Board membership to a maximum of seven, was amended so that no maximum is prescribed and the Board now has one full-time and eight part-time members, which will facilitate the scheduling of hearings.

Function of Board

The Board decides whether applicants for compensation are eligible and the amount to be awarded. Compensation is awarded, for personal injury only, when a person in Ontario is injured or killed as a result of a crime of violence which is an offence under the Criminal Code of Canada. Injuries caused by a motor vehicle are excluded by the Act unless the vehicle is used as a weapon. Compensation may also be awarded when a person is hurt while lawfully arresting or attempting to arrest someone for an offence against another person; when a person is injured while assisting a law officer; or when someone is injured while preventing or trying to prevent an offence against another person.

Hearings

Hearings of the Board are public except where a public hearing would be prejudicial to a trial, or in cases involving sexual offences. They are held in Toronto and, when practicable, in such centres as Thunder Bay, Sudbury, Sault Ste. Marie, Sarnia, Ottawa, Kingston, London and Windsor, where hearings took place in the year under review.

Productivity

The Board heard 858 applications, compared to 713 in the previous fiscal year, an increase of 20 per cent. Total awards granted increased by 24 per cent from \$1,748,484.75 to \$2,170,688.91, while the average award rose from \$1,960.72 to \$2,059.79, or five per cent. The number of applications for compensation declined slightly from 1,219 to 1,190.

Annual Report

This report is available from the Board's offices at 439 University Avenue, 17th Floor, Toronto M5G 1Y8. Telephone: 965-4755. Brochures in various languages are also available from the Board and can be found in court houses, police stations, legal aid offices, and a number of other public buildings throughout Ontario.

Boards and Commissions

Comparative Summary — Fiscal Years Applications and Disposition

	April 1, 1976 to March 31, 1977	April 1, 1977 to March 31, 1978	April 1, 1978 to March 31, 1979	April 1, 1979 to March 31, 1980
Applications under investigation on April 1	914	1188	1500	1826
Eligible applications received	971	1105	1219	1190
Applications heard (1)	611	570	713	858
(a) Heard and dismissed	63	52	47	75
(b) Heard — further evidence required	5	nil	nil	1
Second hearings	4	nil	1	1
Reviews of award	6	12	6	13
Decisions completed and awards ordered (2)	609	563	713	843
(a) Interim awards	8	1	6	8
(b) Supplementary awards	25	26	12	49
(c) Periodic awards	21	19	20	29
Files closed	86	223	180	245
Lump sum payments	\$1,192,840.37	\$1,310,698.60	\$1,397,994.00	\$1,736,551.32
Periodic payments	230,800.56	301,138.28	350,490.75	434,137.59
Total of awards	1,423,640.93	1,611,836.88	1,748,484.75	2,170,688.91
Average Award (3)	1,958.69	2,328.06	1,960.72	2,059.97
Applications under investigation on March 31	1188	1500	1826	1913

Notes: (1) Includes heard and dismissed and heard but further evidence required
(2) Includes interim, supplementary and periodic awards.
(3) Periodic payments not included in arriving at average award.

Board of Negotiation

Chairman:
W.C. Dymond

Members:
J.M. Bennett
J.A. Ferguson
F.L. Heaman
W.J. Mowat
G.W. Swayze

Function

The Board of Negotiation was created by the provision of The Expropriations Act, 1968-69. It provides an informal tribunal which, without prejudice to any subsequent arbitration procedures, may negotiate in a summary and informal manner settlement of a compensation in expropriation cases.

Informality

The Board, upon receiving a written request from either party, arranges meetings between the expropriated party and the expropriating authority. A formal notice is issued to both parties, advising them of the time and place of the meeting, which can be held throughout the province without cost to either party. A unique provision of the Act provides that the Board shall view the property in question.

An individual may appear on his own behalf to present his compensation claim. If no agreement follows these informal negotiations, the parties are free to proceed to arbitration to the Ontario Land Compensation Board.

Monthly Breakdown Fiscal Year April 1, 1979 – March 31, 1980

	Requests Received	Meetings Held
April	17	8
May	14	11
June	20	13
July	8	9
August	10	14
September	5	11
October	9	12
November	18	8
December	6	8
January	23	13
February	12	11
March	20	17
	162	135

Note: At the end of March 31, 1980, there were 34 files left in process:

- 9 of the 34 are to be scheduled and
- 25 are scheduled and waiting to be held

Boards and Commissions

Activity Report — Fiscal Year 1979 — 1980		Two-Year Follow-Up Report Fiscal Year 1978 — 1979	
Expropriating Party	Number of Applications	Number of requests for meetings (1978-79)	189
Corporation of the City of Brampton	1	Number of settlements reported following negotiations in the period April 1, 1978 to March 31, 1979	41
Burlington	1	Requests for meetings — cancelled	20
Hamilton	1	Balance to be surveyed by Two-Year Follow-Up	128
Kingston	1	This Report is based on replies to 128 Questionnaires mailed to the Expropriating Authorities from whom we had not heard regarding results of 1978-79 meetings.	
Nepean	10	Questionnaires mailed	128
Oshawa	1	Replies received	124
Peterborough	1	Unanswered	4
Thunder Bay	1	Settlements (Board of Negotiation's Recommendation a factor)	58
Toronto	1	Proceeded to, or intending to proceed to Land Compensation Board	39
Windsor	6	Still Negotiating	21
Woodstock	1	In Abeyance, pending, not presently being negotiated	6
Corporation of the Town of Halton Hills	1		128
Corporation of the Township of Glenelg	1		
Orillia	1		
Corporation of the Village of Elora & Corporation of the County of Wellington	1		
County of Northumberland	1		
Oxford	4		
Victoria	1		
Ministry of the Environment	2		
Government Services	10		
Housing	1		
Transportation and Communications	64		
Metropolitan Separate School Board	4		
Municipal Corporation of the County of Bruce	1		
Ontario Hydro	11		
Regional Municipality of Durham	1		
Halton	6		
Hamilton-Wentworth	1		
Niagara	1		
Ottawa-Carleton	7		
Peel	2		
York	6		
Town of Tillsonburg	1		
Union Gas	9		
	162		

Land Compensation Board

Chairman:

R.M. McGuire

Vice-Chairmen:

R.M. Grant, Q.C.

J. Worrall, Q.C.

S.R. Cole

Members:

G. Campbell, Q.C.

J. Dobbs

G.M. Hobart

G.P. Marriott (Retired April 30, 1980)

D.W. Middleton

E.H. Reed (Retired April 30, 1980)

Registrar:

C.E. Warner

Established

Under the authority of The Expropriations Act, December 1, 1970.

Function

The Land Compensation Board is an arbitration tribunal to determine compensation to be paid in the expropriation of property in the Province.

Procedural changes recently introduced have reduced the waiting period for the scheduling of hearings to two to three months.

There is a continuing reduction in the number of outstanding applications but the Board is experiencing some difficulty in bringing the inactive files on for hearing or to close them out.

Notices of Arbitration filed	152
------------------------------	-----

Applications Outstanding as at March 31, 1979	330
--	-----

Applications Outstanding as at March 31, 1980	312
--	-----

Boards & Commissions

Agencies, boards and commissions operating within this Ministry and which have financial and administrative relationships with the Ministry:

Advisory Committee of Public Trustee on Investments

Assessment Review Court

Board of Negotiation

Criminal Injuries Compensation Board

Finance Committee for the Investment of Court Funds

Land Compensation Board

Ontario Law Reform Commission

Ontario Municipal Board

Statutory Powers and Procedures Rules Committee.

Agencies, boards and commissions connected with or working with this Ministry but who do not have any financial or administrative relationship with the Government:

Advisory Committee on Legal Aid

Association of Professional Engineers of Ontario
Judicature Act Rules Committee

Judicial Council for Provincial Judges

Law Foundation of Ontario

Law Society of Upper Canada

Provincial Courts (Family Division) Rules Committee

Registration Board of Ontario Association of Architects.

Background Papers

Recent Developments in the Law Relating to Children

A background paper in the previous Annual Report explored the status of children in Ontario in light of the United Nations Declaration of the Rights of the Child. The Ministry of the Attorney General has recently been involved in two major developments that significantly strengthen the rights of children in Ontario law.

Reform of Child Custody Law

The first development was the introduction on December 14, 1979 of The Children's Law Reform Amendment Act, 1979, Bill 205. The Bill received first reading only. It was amended and reintroduced as Bill 140 on June 19, 1980. The Bill proposes a comprehensive reform and consolidation of child custody law and procedures aimed at strengthening and elaborating the principle that the best interests of the child should be the focus of legal proceedings in family disputes about custody of a child. Unfortunately, because of the divided constitutional responsibility for family law, provincial legislation may not prescribe procedures for resolving custody disputes between parents who are seeking a divorce. Divorce is the subject of federal legislation. Thus, the provincial law deals primarily with disputes about custody where no divorce is sought. Where a children's aid society wishes to remove the child from the custody of both parents for the protection of the child the proceedings are conducted under the provincial Child Welfare Act, administered by the Ministry of Community and Social Services. Although these limits on the scope of the proposals must be taken into consideration, the commitment to recognition of the best interests of the child will have an effect beyond the legal boundaries of the legislation.

Although our courts have striven to serve the best interests of children they have done so with virtually no legislative guidance. The Infants Act, our major custody statute until 1978, did not mention the best interests of the child. The Family Law Reform Act, 1978 does declare that custody is to be determined in accordance with the best interests of the child, but there are no guidelines and few procedures in the Act for giving effect to that principle. Accordingly, the introduction of the children's law reform proposals marked a major step forward.

Best Interest Guidelines

As anticipated in the previous background paper the proposed legislation lists a number of factors that are deemed to be relevant to the determination of the child's best interests. Of course, the list is not intended to be exhaustive. Room must always be left for factors relevant to the needs of the particular child and for development of new areas of concern about children's interests. However, the list does represent a general consensus about some of the essential elements to be considered in weighing the best interests of the child.

First and foremost among the factors is the love, affection and emotional relationship between the child and the persons around him. The necessity of a loving parent, sensitive to the needs and feelings of the child, surely is beyond dispute. Therefore, this factor reflects the principle that the child should be in the custody of the person or persons who, from the child's point of view, mean the most in terms of the child's emotional and psychological growth and development.

Corollary to this ingredient of the child's interests is the ability and willingness of the parents or other persons seeking custody to meet the child's emotional and psychological needs, as well as his social and basic economic needs.

In recent years much concern has been expressed about the adverse effects on the child when established personal relationships are disrupted. Therefore, the guidelines direct consideration to the stability of the child's past home environment relative to the proposed family unit. Also relevant in this context are both future plans for the child and the blood or adoptive relationship between the child and the person seeking custody.

The hallmark of reform of private custody law is the recognition given to the importance of the views and preferences of the child. As the person most affected by a custody dispute the child has a self-evident interest in having his views and preferences taken into consideration along with other factors relating to his interests. However, because of the ultimate responsibility of parents for the care and control of their children and because of the varying abilities of children to assess their own life situation, the views and preferences of the child are not elevated to a position of paramountcy.

As mentioned above, the disruption in a child's life that accompanies a custody dispute can have traumatic effects. A child's sense of time differs vastly from an adult's sense of time. A five-year-old child who has to wait a year or even two years for the final determination of a custody dispute has spent 20 per cent of his life in a state of conflict and uncertainty. The psychological impact of such a disruption can have serious repercussions for the child's emotional well-being. The primary source of delay is the parties themselves, who become embroiled in tactical battles and legal manoeuvring in attempts to strengthen their case. In order to focus the attention of the parties and the court on the need of the child to have the dispute resolved as quickly as possible the legislation sets a six-month time limit for completion of legal proceedings.

Joint Custody

One area in which the law is too blunt an instrument in dealing with family matters is in the arbitrary division between custody and access. The person who has custody has virtually all the rights of a parent in respect of the person of the child. The person who has access often has only the right to visit or communicate with the child. Thus, a loss of custody is the loss of the right to choose the child's school and extra-curricular activities, the loss of the right to consent to medical treatment, and so forth. A number of parents are willing to accept that it may be better for the child to reside with the other parent, but do not want to lose all influence over the child that would result from giving up custody. Furthermore, they feel it unfair to bear the social stigma of having "lost" custody of their child, when in fact they wish to act in the best interests of the child. Finally, it is important in the eyes of the child to know that he is equally esteemed by both parents.

The courts have been somewhat reluctant to make orders for joint custody because of uncertainty about the legislative authority for such orders and because of uncertainty about the implications of joint custody. They are also concerned about imposing joint custody on the parents where the parents have not demonstrated some degree of co-operation and sharing. It is sometimes felt that joint custody means the child will live half his

time with one parent and half the time with the other parent. Although such an arrangement seems to work satisfactorily in some cases, its use would likely be quite limited. In most cases joint custody would mean that one parent would have day to day care and control of the child and the other parent would have liberal access plus the power of joint decision making.

Because joint custody is a developing concept the proposed legislation recognizes the authority of the court to award custody to more than one person, in an appropriate case but does not spell out how and when joint custody should be ordered.

Child Abduction

One of the most serious problems in family law today is the problem of the parent who abducts the child in breach of the custody or access rights of the other parent. Estimates of the number of abducted children vary; however, it is generally felt that the consequences of an abduction are usually so harmful to the child as to warrant special attention in the law. Regretably, however, the law cannot eliminate child abduction; it can only limit it. Some of the parents who become involved in abducting a child are so overwrought with hostility and emotion that they do not take the law into account when they kidnap the child. Accordingly, law can only make it more difficult to apprehend the child and less attractive to retain the abducted child.

The other limitation on the law is its jurisdictional aspect. Laws or court orders made in one province or country do not automatically bind persons in another province or country. This could provide an incentive for a kidnapper to take the child out of Ontario to another province or another country beyond the reach of Ontario law. Therefore, the problem of child abduction must be tackled not only on the provincial level but also at the national and international level as well. In recent years the consensus of international opinion has gathered around a system to remove the incentive to abduct a child from one jurisdiction to another.

The Ontario proposals work in two ways. The first principle is that the Ontario courts should not normally make custody orders in respect of a child who does not habitually reside in Ontario, even if no court order has been made in the other

Background Papers

province or country. This means that a parent who brings an abducted child to Ontario cannot expect the Ontario courts to look sympathetically on his case and make a new custody order contrary to the rights of the parent outside Ontario. At its simplest, the proposal is to close the legal door to kidnappers bringing children into Ontario. Ontario will not become a haven for child abductors. We have been fortunate insofar as our courts have already recognized this principle. The proposed legislation gives further definition to the court decisions and provides uniform rules for the further guidance of the court.

Whenever we are dealing with an issue as unique as a child's best interests the application of inflexible rules may sometimes work to the detriment of the interests we are trying to protect. Accordingly, provision is made for those exceptional cases where an Ontario court ought to make an order for custody of a child even though he was abducted outside Ontario and brought here. For example, the parent may have brought the child to Ontario to escape the oppressive regime of a foreign country. Therefore, it is proposed that where the child would suffer serious harm an Ontario court may make a custody order even if the child is not habitually resident in Ontario.

Where the abducted child would not suffer serious harm the Ontario court could make an interim order and order the child back to the proper province or country.

The proposed legislation deals with kidnapping in another way as well. It provides that where a custody or access order has already been made outside Ontario, a party may, provided certain criteria are met, apply to have the order recognized in Ontario and enforced as if it were an Ontario order. This is basically the way in which the Uniform Extra-Provincial Enforcement of Custody Orders Act operates. That Act is in force in eight provinces. It is *not* a reciprocal Act. It is unilateral. It is autonomous. So is our provision. The enacting province undertakes to enforce the orders of the other provinces, regardless of whether other provinces will recognize its orders.

The reason that approach has been adopted in Canada is quite simple. The ability of an Ontario court to act in the best interests of a child kidnapped from Manitoba should not depend upon the intergovernmental problem of whether

or not there is a reciprocal agreement between the two provinces.

As these provisions also apply to orders made outside Canada, some extra safeguards had to be built in regarding recognition of foreign orders because there may be jurisdictions in the world that do not recognize such elementary principles as the equal rights of parents to custody, the need to consider the best interests of the child, and the applicability of rules of natural justice.

Both the provisions regarding assumption of jurisdiction and these provisions for enforcement are being considered by the Uniform Law Conference in its review of The Extra-Provincial Custody Orders Enforcement Act. Accordingly, the Ontario provisions may well become the basis of a new Uniform Act.

While the Ontario proposals were being developed work was proceeding on the international level for an international convention on the civil aspects of international child abduction. This was the project of the Hague Conference on Private International Law. Canada has been an active supporter of the Hague Convention and Mr. H. Allan Leal, Q.C., Deputy Attorney General For Ontario, was head of the Canadian delegation.

As suggested above, at the international level it has been agreed that the most effective way to deter child abduction is for each state to agree that it will first respect the rights of custody that exist under the laws of other states. Where this approach is adopted the abducting parent gains no advantage in removing the child from his own state and taking him to a foreign state. The courts of the foreign state will not be willing to make new custody orders. Rather, the foreign state will undertake to secure the prompt return of a child who is in that state in breach of custody rights in the child's own state. The basic principle behind this approach is that decisions about the custody of a child ought to be decided in the state or jurisdiction where the child habitually resides. Therefore, when he is abducted to a foreign state he ought to be returned to the state where he habitually resides so the dispute can be determined there. In this regard the influence of the International Convention on the Ontario proposals is obvious. It is to be expected that eventually the Hague Convention will be made to apply to Ontario. However, as the Convention will apply only to those states that ratify the Convention,

the Ontario proposals would continue to apply in respect of those states which are not part of the Convention.

In considering the Ontario proposals and the Hague Convention one must keep in mind that they are dealing only with the civil aspects of child abduction, such as the authority of the courts to make custody orders. Child abduction may also have criminal aspects for which other remedies exist.

Obviously the effective enforcement in Ontario of custody orders made here is a key element in tackling the problem of child abduction. Under The Family Law Reform Act the court has the power to make orders to restrain harassment of a person with lawful custody of a child, to find a person in contempt for breaching a court order, and to provide disclosure from private or public records of the address of a person who has a child in his custody. These provisions are incorporated in the proposed children's law reform legislation. In addition, two important new powers are included in the proposals. First, the courts would be given the power to direct the police to apprehend a child who is being unlawfully withheld from a person entitled to custody of or access to a child. One of the most serious problems is that there has been no clear authority for the police to intercept a parent fleeing with the child in contravention of the right of the other parent to custody or access. This proposal would help to close that gap in our law.

The second power is the power of the court to direct a person to surrender his passport where there are reasonable grounds to suspect that the person may unlawfully remove or retain the child outside Ontario. Although this power will not be helpful in cases where a person can travel without a passport, in a proper case it will strengthen the ability of the courts to deter an abduction.

In a world changing as fast as our world and in a society with ever more complex social issues it would be unrealistic to expect that clear legal remedies could be prescribed for such a difficult problem as the resolution of child custody disputes. The role and capacity of law in relation to many of our social problems is much more limited than we may realize. Although it has the power of authority it cannot provide us with definitive answers to every conceivable problem and eliminate our fear of uncertainty. At best it

can provide some signposts to direct us on our way, but the journey is ours to make. We ought to keep in mind the advice of the great American jurist Benjamin Cardozo:

"The inn that shelters for the night is not the journey's end. The law, like the traveller, must be ready for the morrow".

Separate Legal Representation

The second major recent development in the law relating to children has been the implementation of the child representation program through the Office of the Official Guardian. The catalyst which led to the formation of the Child Representation Program was the establishment, in January 1977, of the Attorney General's Committee on the Representation of Children in the Provincial Court (Family Division). The Attorney General's Committee presented two reports, both of which recognized the need for the representation of children in some, but not all, proceedings under The Child Welfare Act. The recommendations of that Committee resulted in the enactment of section 20 of The Child Welfare Act, 1978. This legislative provision was proclaimed in force as of February 1, 1980 and ensures that, when necessary, independent legal representation will be provided to children in neglect and abuse proceedings.

The co-operation of the private bar and the Legal Aid Plan has been an important factor in the success of the Child Representation Program which provides representation to children throughout Ontario. The program at present includes more than 500 members of the private bar, each of whom has attended a workshop conducted by the Official Guardian's Office. Upon completion of this course, lawyers then become members of a panel within their own judicial area and provide independent representation for children in abuse and neglect proceedings. Panels have been set up in 46 judicial areas which basically correspond to Ontario's counties and districts. Local committees have been established in these areas to serve as advisory bodies to the Child Representation Program.

Within the judicial district of York, referrals are made directly to the Office of the Official Guardian. In other judicial areas of Ontario, referrals are made to the local Legal Aid Area

Background Papers

Director who assists the Official Guardian in the administration of the program. When a referral is received by either the Official Guardian's Office or a local Legal Aid Area Director, a panel lawyer or a representative from the Official Guardian's Office is assigned a case on a rotational basis. Only those members of the private bar who have participated in a workshop are entitled to be panel members and to be paid by the Official Guardian for representation of children pursuant to section 20 of The Child Welfare Act.

The Official Guardian has established a tariff for panel lawyers and requires all statements of accounts to conform strictly to its provisions. The panel lawyers receive regular newsletters from the Office of the Official Guardian, as well as updates in the law.

The Official Guardian's Office has conducted two sets of workshops across the province. The first workshops were held in the autumn of 1979 and were seven in number; the second set, of which

there are six, began in June 1980 and were completed in October. The 1979 and 1980 workshops used a multi-disciplinary approach which involved lawyers, psychiatrists, psychologists and social workers. Not only do lawyers attend these courses, but also representatives from Legal Aid, the judiciary, children's aid societies, and various community groups.

In the first six months of the program approximately 1,500 children received independent legal representation. The Child Representation Program receives referrals from the court, children's aid societies and other community organizations, and private persons, including children themselves.

The implementation of the Child Representation Program establishes Ontario as a leader in the development of separate legal representation for children in Canada.

Appendix

Acts Administered by the Ministry of the Attorney General

Absconding Debtors Act
Absentees Act
Accidental Fires Act
Accumulations Act
Administration of Justice Act
Age of Majority and Accountability Act, 1971
Aliens' Real Property Act
Anglican Church of Canada Act, 1979
Anti-Inflation Agreement Act, 1976
Arbitrations Act
Architects Act
Assessment Review Court Act, 1972
Assignments and Preferences Act

Bail Act
Barristers Act
Blind Persons' Rights Act, 1976
Bulk Sales Act
Business Records Protection Act

Change of Name Act
Charitable Gifts Act
Charities Accounting Act
Children's Law Reform Act, 1977
Commissioners for Taking Affidavits Act
Compensation for Victims of Crime Act, 1971
Constitutional Questions Act
Conveyancing and Law of Property Act
Costs of Distress Act
County Court Judges' Criminal Courts Act
County Courts Act
County Judges Act
Creditors' Relief Act
Crown Administration of Estates Act
Crown Agency Act
Crown Attorneys Act
Crown Witnesses Act

Devolution of Estates Act
Disorderly Houses Act
Dominion Courts Act

Escheats Act
Estreats Act
Evidence Act
Execution Act
Expropriations Act
Extra-Judicial Services Act

Factors Act
Family Law Reform Act, 1978
Fines and Forfeitures Act
Fraudulent Conveyances Act
Fraudulent Debtors Arrest Act
Frustrated Contracts Act

Gaming Act
General Sessions Act

Habeas Corpus Act
Hospitals and Charitable Institutions Inquiries Act
Hotel Registration of Guests Act

Infants Act
Innkeepers Act
Interpretation Act
Interprovincial Subpoenas Act, 1979

Judges' Orders Enforcement Act
Judicature Act
Judicial Review Procedure Act, 1971
Juries Act, 1974
Justices of the Peace Act

Landlord and Tenant Act
Law Society Act
Legal Aid Act
Libel and Slander Act
Limitations Act
Lord's Day (Ontario) Act

Master and Servant Act
Matrimonial Causes Act
Mechanics' Lien Act
Mental Incompetency Act
Mercantile Law Amendment Act
Ministry of the Attorney General Act
Minors' Protection Act
Mortgages Act
Municipal Conflict of Interest Act, 1972

Negligence Act
Notaries Act

Occupiers' Liability Act, 1980
Ontario Law Reform Commission Act
Ontario Municipal Board Act

Appendix

Partition Act	Unconscionable Transactions Relief Act
Partnership Act	Unified Family Court, 1976
Pawnbrokers Act	University Expropriation Powers Act
Perpetuities Act	
Powers of Attorney Act, 1979	Variation of Trusts Act
Proceedings Against the Crown Act	Vendors and Purchasers Act
Professional Engineers Act	Vexations Proceedings Act
Property and Civil Rights Act	Vicious Dogs Act
Provincial Court (Civil Division) Project Act, 1979	
Provincial Courts Act	Wages Act
Provincial Offences Act, 1979	Warehousemen's Lien Act
Public Accounting Act	Warehouse Receipts Act
Public Authorities Protection Act	
Public Halls Act	
Public Inquiries Act, 1971	
Public Institutions Inspection Act, 1974	
Public Officers Act	
Public Officers' Fees Act	
Public Trustee Act	
Quieting Titles Act	
Reciprocal Enforcement of Judgments Act	
Reciprocal Enforcement of Maintenance Orders Act	
Regulations Act	
Regulations Revision Act, 1979	
Religious Institutions Act	
Religious Organizations' Lands Act, 1979	
Replevin Act	
Sale of Goods Act	
Settled Estates Act	
Sheriffs Act	
Short Form of Conveyances Act	
Short Form of Leases Act	
Short Form of Mortgages Act	
Small Claims Courts Act	
Solicitors Act	
Statute of Frauds	
Statutes Act	
Statutes Revision Act, 1979	
Statutory Powers Procedures Act, 1971	
Succession Law Reform Act, 1977	
Summary Convictions Act	
Surrogate Courts Act	
Ticket Speculation Act	
Time Act	
Trespass to Property Act, 1980	
Trustee Act	

Notes

Notes

